



## AFRICA'S LAST COLONY: SAHRAWI PEOPLE – REFUGEES, IDPS AND NATIONALS?

Veronica Fynn

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### Abstract

*For three decades, some 180,000 (half the population of WS) Sahrawis have lived on the edges of Algeria in canvas tents and mud brick huts with no running water; using car batteries as their only source of electricity. Everything from food, shelter to medical care is donated by international aid agencies. The plight of Sahrawis are continuously ignored and downplayed<sup>1</sup> partly as a result of lack of international support and media attention. Although the Sahrawi Arab Democratic Republic (SADR) has special status with the AU, Morocco – the only exception to AU membership on the continent – also happens to be the only country that opposes membership of Western Sahara/SADR to the AU. Apart from being a bona fide member of the AU, SADR has been recognized by 84 other countries worldwide<sup>2</sup> but certainly not the UN. Part of Morocco “convenient membership”<sup>3</sup> with the AU is linked to on-going conflict between Morocco and SADR, commonly referred to as “Africa’s last colony.”<sup>4</sup> Against this backdrop, this paper hopes to provoke academic dialogue around the historical, legal and philosophical mindset of independence, self-determination and colonial vestiges tie to the technical inferences of “internal hostages” of indigenous Sahrawis by Morocco.*

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**Keywords:** Western Sahara, Sahrawis, Morocco, decolonization, self-determination, refugees, IDPs

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### Author's Affiliation

Veronica Fynn is a Founder/CEO of EV Research Inc., and the Editor-in-Chief of the Journal of Internal Displacement. This paper was written during a 4-month visiting researcher study at Georgetown University. Thanks to O'Neill Centre for Global and National Health Law and the John Wolffe International Law Library for providing the resources and opportunity to study as a visiting scholar.

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<sup>1</sup> Samuel Loewenberg, “Displacement is Permanent for the Sahrawi Refugees” (2005) 365 The Lancet at 1295 to 96

<sup>2</sup> Norwegian Refugee Council, *Western Sahara: Occupied Country, Displaced People* (Oslo: NRC, 2008) at 1 to 18

<sup>3</sup> In certain instances Morocco is allowed to part-take in AU activities and in others, they are either refused or not allowed.

<sup>4</sup> See, Eli Rognerud, “NRC Launches Report: Turning the Blind Eye on Western Sahara” Reuters (May 28, 2008) online: <<http://www.alertnet.org/thenews/fromthefield/nrc/120670871063.htm>>

## **AFRICA'S LAST COLONY: SAHRAWI PEOPLE – REFUGEES, IDPS AND NATIONALS?**

**Veronica P. Fynn**

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### **Introduction**

On 6 March 1957 - Fifty-four years ago, the republic of Ghana heralded the “freedom from colonial rule” expedition in Africa. By 1977, but for Zimbabwe, apartheid South Africa, Namibia and most recently Southern Sudan; the entire continent chanted songs of victory as citizens anticipated self-governing and determination. Today, the words of Kwame Nkrumah “the independence of Ghana is meaningless until it is linked with the total liberation of the African continent”<sup>5</sup> come alive as Sahrawi Arab Democratic Republic (otherwise known as Western Sahara) struggles vehemently to reclaim their land and aspire self-determination.

For 92 years (1884-1976) the Spanish ruled the colony known as Western Sahara although during the Scramble for Africa at the 1885 Berlin Conference the hinterland was not clearly occupied until the 1930's. Its economic value to Spain was due almost entirely to the immense deposits of phosphates.<sup>6</sup> The onset of SADR's fracas marked by the inception Spanish agreement signed with Morocco and Mauritania to share Western Sahara between the two countries. Since 1976, theirs have been rebellious yet thwarted efforts in acquiring self-governance.<sup>7</sup>

The Sahrawis are a composition of Arab, Berber and Black African descent. Until the late 1950's the colonial status of the Western Sahara did not affect its traditional nomadic pastoral structure. However, following the mining boom in 1974, with more than half the territory's population living in the three major towns – Laayoune (El Aioun), Smara and Dakhla (Villa Cisneros), nomadism was almost non-existent even as the drought lingered throughout the West African Sahel forcing many Sahrawis to moved north of Morocco. During Morocco's struggle for independence from France in the 1950s the leading nationalist *Istiglal* or *Independence Party* backed Morocco's claim to the territory. This partly resulted in Morocco's refusal to recognize Mauritania's independence in 1960 and fuelled the war with Algeria in 1963 pertinent to ownership of Tindouf in southwest Algeria.<sup>8</sup>

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<sup>5</sup> Kwame Nkrumah (1909-1972) was the leader of Gold Coast who became the first president of Ghana from 1957 to 1966 when he was deposed by a *cou d'état*. He is recognized as the father of modern pan-Africa.

(<http://www.fordham.edu/halsall/mod/1961nkrumah.html> and [http://www.pbs.org/wgbh/commandingheights/shared/minitext/prof\\_kwamenkrumah.html](http://www.pbs.org/wgbh/commandingheights/shared/minitext/prof_kwamenkrumah.html)).

<sup>6</sup> Amnesty International, *Morocco: "Disappearances" of People of Western Saharan Origin* (New York, NY: Amnesty International, 1990) at 4.

<sup>7</sup> I. Saint-Paul, "L'histoire des Sahraouis, peuple du désert sans pays" (21 Mai 2009) *Mon Quotidien Online*: <[manuchao.com/ressources/news/news\\_id478/annexe.pdf](http://manuchao.com/ressources/news/news_id478/annexe.pdf)>

<sup>8</sup> Amnesty International supra 6.

Fast forward to 1973, on September 21st General Francisco Franco sent a letter in response to Djema'a,<sup>9</sup> who had officially asked the General to allow greater participation and autonomy in the territory's administration, where he assured that Spanish state solemnly repeats and guarantees that Saharawis will be able to govern themselves.<sup>10</sup> However, due to his terminal illness and the expectation of change, the Moroccan government was unwilling to continue fighting the Polisario Front.<sup>11</sup> Thus, the war continued in the Territory from 1975 to 1991 with periods of fierce fighting interspersed with inactivity and occasional ceasefires in response to UN Peace Missions. Consolidation of Morocco's control over Western Sahara has been achieved mainly by way of a 2,700 kilometres long defensive structure. The protective Western Sahara Berm (also known as the *Moroccan Wall*) was constructed in six stages over a period of seven years. The final structure built in 1987 brings almost all of the territory of the Western Sahara under effective Moroccan control.<sup>12</sup>

After two decades of struggle, at the UN 83<sup>rd</sup> Plenary Meeting on 9 December 1994, having considered

the inalienable right of all peoples to self-determination and independence, in accordance with the principles set forth in the Charter of the United Nations and in General Assembly resolution 1514 (XV) of 14 December 1960, containing the Declaration on the Granting of Independence to Colonial Countries and Peoples<sup>13</sup>

the UN set-forth to began the process of decolonization of Western Sahara.

By so doing, the UN offered support to a referendum for self- determination of the people of Western Sahara, in conformity with Security Council Resolutions 658 (1990) and 690 (1991) and hoped Morocco and Western Sahara will resume dialogue in order to create an atmosphere conducive to a speedy and effective implementation of the Settlement Plan. By August 1988 both parties to the conflict accepted the peace proposal for the territory submitted by the UN Secretary-General Javier Perez de Cuellar, and on 3 January 1989 a delegation from the Polisario Front met King Hassan II of Morocco in Marrakech.<sup>14</sup>

With these events and more carefully delineated, this paper aims to provoke academic dialogue around the historical, legal and philosophical mindset of independence, self-determination and colonial vestiges tie to the technical inferences of "internal hostages" of indigenous Sahrawis by Morocco. Noteworthy, is the fact that the terms "Western Sahara", "Sahrawis" and the "Sahrawi Arab Democratic Republic" are used interchangeably to reference Sahrawis and its territories.

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<sup>9</sup> In Sahrawi's tribe, the Djema'a is composed of elders and elected leaders who organize war efforts, raiding parties, lawmaking, diplomacy, and settled disputes between members of the tribe. (See, <http://en.wikipedia.org/wiki/Djema%27a>).

<sup>10</sup> B's Independence Pro-Peace Initiative, "Dispute for control of Western Sahara – 1975/991" online: <[http://www.bippi.org/bippi/menu\\_left/conflicts/WSahara/WSahara\\_Decolonisation.htm](http://www.bippi.org/bippi/menu_left/conflicts/WSahara/WSahara_Decolonisation.htm)>

<sup>11</sup> The collapse of Spain's African empire was hastened by events in Portugal where, in 1974, the overthrow of President Marcelo Caetano was accompanied by democratization and the independence of the Portuguese African colonies.

<sup>12</sup> Amnesty International supra at 7

<sup>13</sup> United Nations, "Question of Western Sahara" General Assembly (December 9, 1994) online: <<http://www.un.org/documents/ga/res/49/a49r044.htm>>

<sup>14</sup> Ibid at 8.

## Historical Background

Situated in northwest Africa, the size of Western Sahara – a sandy plain, scarce oasis dotted with underground water resources – was finally set by the UN at 266,000 square kilometres in 1956. Due to the northeast trade winds, its arid climate lingers at the coast where cattle raising, fishing and mining of phosphates (since 1970) signifies its wealth. The population of Sahrawi estimated at 273,000 people is dominantly Arab-Berber, Muslim Bedouins with small portions of black and nomads.<sup>15</sup> It differs from that of Morocco's as a result of Spanish colonial rule between 1960 and 1975.<sup>16</sup>

Jose Ignacio Cuervo (2006) historically maps alien visitations to coast of Western Sahara. Beginning in the 13<sup>th</sup> century, visitors such as the Genovese, Catalans and Mallorcans touched upon the soil. Following, was the discovery of rich fishing grounds in the 14<sup>th</sup> century, which attracted more foreigners as they searched for slaves and traded with the locals. By the 16<sup>th</sup> century, as Morocco begun to develop, opposition to Spanish and Portuguese rule sprinkled. The end of the 18<sup>th</sup> century brought authority of the Alaoui Sultan<sup>17</sup> was secured. Anglo-Moroccan Agreement of March 1885 brought controversy as it implied the British recognition of the Sultan's authority over the stretch of coast between the Draa River and Cape Bojador. This was supported by the Agreements reached on 26 February 1885 in the Berlin Conference as Spain gained greater expansion across Africa; hence it's claim over Cape Bojador and Cape Blanco in Rio de Oro.<sup>18</sup>

The disposition of the Saharan tribes to deal with Morocco's colonial power supported relative peace occupation of their territories. France took over the rich fishing grounds of Galgo Bay and the salt marshes of Iyil under the first agreement in 1900 with Western Sahara, which moved its border northwards thereby splitting Cape Blanco Peninsula between the two countries. In 1904 Agreement Spain was granted the right to occupy Saguia el Hamra; whilst the 1912 Agreement gave Spain the right to establish a Protectorate in the area between the Draa River and the northern Frontier of Saguia el Hamra (Cape Juby). Once independence was granted to Morocco in 1956, Spain changed the status of Ifni and the Sahara to that of "provinces" and allying with France, they worked together in the military operation Ecouvillon aimed striping the Sahara off anyone associated with the Morocco National Liberation Army or any of such hostile local groups.<sup>19</sup>

Though this brought much joy to King Mohammed V of Morocco, who was given cape Juby after 1958, it heightened tension with both the United Nations (1964) and the

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<sup>15</sup> Veronica Fynn, *Legal discrepancies: Internal Displacement in Africa* (Stuttgart: Flowers Books, 2010) at 91.

<sup>16</sup> Jose Ignacio Alguero Cuervo, "The ancient history of Western Sahara and the Spanish colonization of the territory" in Karen Arts & Pedro Pinto Leite, *International Law and the Question of Western Sahara* (Leiden: Ainho & Neves, 2006) at 25.

<sup>17</sup> In the mid 17<sup>th</sup> century, the Alaoui dynasty took power over from the Saadi dynasty. The Sharifan descent (from the line of Ali and Fatima – the Prophet's daughter) legitimized the Alaouis, helping them survive both colonial rule and independence. By the Treaty of Fès (30 March 1912), the French imposed their rule on Morocco dividing it into administrative unit with the Spanish government by virtue of the Madrid Treaty of 27 November 1912. During the period of nationalism, which led to Morocco's independence from France, the Sultan sovereignty of the Sultan was recognized until Sultan Mohammed V, who was deposed by the French. (See, <http://www.usa-morocco.org/alaoui.htm>)

<sup>18</sup> Jose Ignacio Alguero Cuervo *supra* at 26-27.

<sup>19</sup> *ibid* at 28

Organisation of African Unity (1966) as the Sahrawis demanded their right to self-determination. The birth of the Popular Front for the Liberation of Saguia el-Hamra and Rio de Oro, popularly known as the Polisario Front ensued with armed struggle in 1973, which concurred with King Hassan II intention to fight for a Morocco Sahara. Consequential exploitation of Sahrawis resources intensified, sparking more pressure from the UN, thus necessitated discussions around the establishment of autonomous law for the territory. After much hassle, Spain announced on 24 August 1974 that a referendum on self-rule for Sahrawis would be held. To sabotage the process by denying Sahrawis' right to govern its own independent state, on 17 September 1974, King Hassan II announced his intention to bring the matter to the UN's International Court of Justice (ICJ). His announcement resulted in Spain's agreeing to delay the referendum pending the ICJ's response to King Hassan II's requests.<sup>20</sup>

In waiting, the well-publicized historic action – the *Green March* - which marks Morocco's "official"<sup>21</sup> occupation of Western Sahara took place. Carefully orchestrated by military support and the government of Morocco, some 350,000 Moroccan civilians marched into Western Sahara territory and claimed it as a traditional part on 6 November 1975.<sup>22</sup> Prior to the *Green March*, UN visits to the interested countries, also sparked a wave of demonstration in favour of independence and the support of the Polisario Front. Days later, on 14 November 1975 the Tripartite Agreement, also known as the Madrid Accord, was signed between Spain, Morocco and Mauritania, where Spain ceded the northern two-thirds of its territory to Morocco and the Southern third to Mauritanian. The Polisario Front rejected this agreement proclaiming the independence of the Sahrawi Democratic Republic on 27 February 1976 with government liaisons in Tindouf, southwest Algeria where tens of thousands of Sahrawi refugees have fled across the border since 1975.<sup>23</sup>

Exactly a month after the Madrid Accord, 13 December 1975,<sup>24</sup> the United Nations General Assembly voted on the submission brought for it – 1) "Was Western Sahara (Rio de Oro and Sakiet El Hamra) at the time of colonization by Spain a territory belonging to no one (*terra nullius*)?" And should the majority opinion be "no", the second question would be addressed, 2) what were the legal ties between this territory and the Kingdom of Morocco and the Mauritanian entity? This resulted in *UN General Assembly Resolution 3292 - Western Sahara Advisory: Opinion of 16 October 1975*.<sup>25</sup> By 13 votes to 3, the unanimous opinion was Western Sahara was not a territory belonging to no one at the time of colonization, subsequently 14 votes to 2 votes comply agreed that there were

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<sup>20</sup> International Court of Justice, "Western Sahara Advisory Opinion" Cases (16 October 1975) online: <<http://www.icj-cij.org/docket/index.php?sum=323&code=sa&p1=3&p2=4&case=61&k=69&p3=5>>

<sup>21</sup> According to Marselha Gonçalves Margerin, Morocco invaded Western Sahara with over 350,000 Moroccans during the Green March, in 1975. He argues, despite the Security Council's condemnation of the Green March and calling upon Morocco to "withdraw immediately," Morocco's illegal, unwelcome and hostile presence in Western Sahara continues. Consequently, many consider the Green March the beginning of Morocco's occupation of Western Sahara, and thus, Morocco should have the obligation to fulfill the duties required of all occupying powers under the Fourth Geneva Convention. (See, Marselha Gonçalves Margerin, "The legal obligations of the United Nations and its Member States to uphold human rights in Western Sahara" IV Symposium of the Public Universities of Madrid on Western Sahara (May 28, 2010) online: <<http://www.rfkcenter.org/node/542>>

<sup>22</sup> Jerome Weiner, "The Green March in Historical Perspective", (1979) *Middle East Journal* 33 at 20-33

<sup>23</sup> Amnesty International, *Morocco: "Disappearances" of People of Western Saharan Origin* (New York, NY: Amnesty International, 1990) at 6-7.

<sup>24</sup> Jose Ignacio Alguero Cuervo, *supra* 29-30.

<sup>25</sup> ICJ *supra*

legal ties between this territory and the Kingdom of Morocco and the Mauritanian entity.<sup>26</sup>

Noteworthy, is the UN report's findings, which were in favour of a referendum to enable the Sahrawis to exercise their right to self-determination, were published the day before ICJ's advisory opinion. Even though, it seems as though ICJ's findings supported Morocco's claims to sovereignty over the Sahrawis' territory, its main conclusion was to support the principle of self-determination for all peoples. However, before the UN General Assembly Resolution 3458A<sup>27</sup> was realized, the Madrid Accord had already taken effect.<sup>28</sup> For lack of a better reasoning, it can be questioned that even if Western Sahara legally belong to Morocco and Mauritanian<sup>29</sup> entities, at the dawn of international law, what be there to prevent any group or country from subscribing to full independence and/or self-governance except by the use of compulsion, coercion and constraints?

### **The Emergence of (Anti)-Colonialism**

By tradition, Sahrawis are nomadic. Ethnically, they are of Moorish or mixed Arab-Berber descent and speak Hassaniya, an Arab dialect that is closely related to classical Arabic. According to Gino Naldi (1999) Western Sahara was colonized by Spain in 1884 through a series of treaties with local rulers. Spain then proceeded to govern it with a policy of absent-minded neglect. The Spanish presence did meet with resistance and it was not until 1934 that its authority was finally established throughout the territory. The question of disputed sovereignty first arose upon Morocco's independence from France in 1956.<sup>30</sup>

Morocco's close proximity to Europe (precisely Spain and France) implies that the emergence of colonial rule was greatly influenced by events initiated by these entities. In similar vein, the effect of colonization and its struggle for independence in 1956 is, to a larger extent, responsible for sizzling transformation of the internal structure of its original form, including Western Sahara. By establishing their protectorates in 1912, France and Spain drastically split the country into three divisions - Arab Berber, urban tribal and the Makhzen-siba divisions. Joshua Castellino (2000) observes that with prior to the colonial partitioning of Morocco,

there seems to be a clear indication that identity was much more localized, especially in the case of Berber tribes which followed ideals that could be identified as being democratic in spirit; where contact between governed and governing was much closer

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<sup>26</sup> International Court of Justice, "Western Sahara - Advisory Opinion of 16 October 1975" online: <[http://www.afrol.com/Countries/Sahara/documents/icj\\_advice\\_1975.htm](http://www.afrol.com/Countries/Sahara/documents/icj_advice_1975.htm)>

<sup>27</sup> U.N. General Assembly Resolution 3458A, adopted by the General Assembly on 10 December 1975, reaffirmed the right of the inhabitants of Western Sahara to self-determination but also noted the Madrid agreement and called for further consultations with the territory's population without offering any formal timetable or condemnation of Moroccan actions. (See, Samuel J. Spector, "Western Sahara and the self-determination" (2009) XVI Middle East Quarterly 3 at 33-43)

<sup>28</sup> Amnesty International at 7.

<sup>29</sup> Note: In August 1979 Mauritania renounced its claim to the southern section of Western Sahara and signed a peace accord with the Polisario Front. Moroccan forces were immediately deployed throughout the territory. (See, Amnesty International, 1990).

<sup>30</sup> Gino J. Naldi, *The Organization of African Unity: An Analysis of its Role* (London: Bookcraft, 1999) at 52.

than in any larger entity.<sup>31</sup>

Without a doubt, colonialism founded on indiscriminately dividing local society without paying much attention to their cultural uniqueness has the potential of not relegating prolonged exploitation to “a thing of the past” but also creates an indefinite state of political, economic or cultural imposition and domination of non-Western native races by alien forces. Although, this method of control externally projects (either by physical force or method coercion) foreign power of one nation into the internal core of another group, B. C. Nirmal (1999) argues that colonialism contributes positively to the colonies with respect to the development of its administrative and legal system, thereby creating “a sense of inferiority among the subjugated people and at same time enhance[ing] the pride of the Western people”<sup>32</sup>

In generally, Nirmal believes that colonialism “contributed to the growth of nationalism in Africa by spreading revolutionary ideas and thinking which had transformed Europe in the past to the rest of the Globe. Western education at home or abroad exposed the native students who were to become the leaders of nationalist movements to the writings of Rousseau, Burke, Fichte, and Mazzini. As a result, these societies somehow progressed their aspiration for “modernization of the traditional societies, liberty, equality and egalitarianism, thereby presenting a critical mass to “rub shoulders” with Western trained leaders and Western domination alike.<sup>33</sup> In the case of Western Sahara, Nirmal's analogy hold partially especially when the “powers there be” makes it a priority to ensure that your freedom is contained, masterminded and polarized under the aegis of “we are all one hence no need to depart”. It is with these nuances that Western Sahara lingers on the fringes of forced displacement, refugeehood and statelessness.

### **From Free Nomads to Colonial Rule**

The situation in Sahrawi territory is extremely tortuous – not only are their fate to full self-determination dependent upon a state so adamant to succumb, but that their boundaries are so nebulous to the extent that, (depending one's outlook), Sahrawis can be classified as nationals, refugees or internally displaced people. Despite claims made by Morocco and Mauritania,<sup>34</sup> pursuant to UN General Assembly Security Council Resolution 1541 XV (1963), Western Sahara was deemed a “non-self territory”.<sup>35</sup>

So, in that case, the territory is clearly defined in which case they will be considered internally displaced within boundaries indirectly demarcated by Morocco. Irrespective of the analogy, modernity characterized by the birth of international law, deems it morally permissible to negotiate governance by consent - anything less risk constitution of exploitation, forced occupation and thus colonization. So, how did Sahrawis arrive at this critical point?

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<sup>31</sup> Joshua Castellino, *International Law and Self-Determination: The Interplay of the Politics of Territorial Possession with Formulations of Post-Colonial 'National' Identity* (The Hague: Martinus Nijhoff Publishers, 2000) at 225.

<sup>32</sup> B. C. Nirmal, *The Right to Self-Determination in International Law* (New Delhi: Deep & Deep Publications, 1999) at 11.

<sup>33</sup> Ibid at 12.

<sup>34</sup> <sup>34</sup> Joshua Castellino supra at 214.

<sup>35</sup> Academie de droit international humnitaire et de droits humains a Geneve, “Morocco: current conflict” (August 11, 2011) online: <[http://www.adh-geneva.ch/RULAC/current\\_conflict.php?id\\_state=140](http://www.adh-geneva.ch/RULAC/current_conflict.php?id_state=140)>

Historical account by Joshua Castellino points to the fact that the Sharifian Empire built on a system of allegiance to the Sultan (the spiritual head of the region), took over the Berber and Arab kingdoms. Arguably, lack of unity fuelled the people's nomadic lifestyle (p216) as land claims struggle between Morocco, Spain and the Sharifian empire struggle with respect to the interior boundary of the country<sup>36</sup> ensued. At the time of colonization of Sahrawis, Mauritania claimed to have possession of the area between Meridan of Timbuktu (east), Atlantic (on West), Senegal River (south) and Wad Sakiet El Hamra (North). As Mauritania sought claims to the land, Sahrawi tribes continue to make traditional migrations, traversing the Shinguitti country<sup>37</sup>. By 1912, as France and Spain claimed control of Morocco thereby splitting the territory into three segments, their need to demarcate the respective spheres resulted in their centralized role.<sup>38</sup>

### **Impact: Deliberate, Repulsive and Persistent Human Rights Violation**

With forced migration comes conflict especially when the need to liberate oneself is of relevant need. So, it is of no surprise that conflicts (violent or non-violent) related to such struggle are always encumbered with physical, social and medical repercussions. In the case of Western Sahara, human rights organizations, such as Amnesty International, have made efforts to highlight abuses associated with the struggle - mainly for the purpose of protecting lives. Human rights violation has been occurring in Western Sahara since the 1960's and ranges from "disappearance"<sup>39</sup>, long-term imprisonment, unfair trials, torture, violent attacks, abuse of the law and more.

#### *Disappearance*

The "disappearances" of several hundreds of political opponents recorded over some 20-year period, (from the 1960s to the 1980s) confirms that many disappeared persons are still missing to date including some 60 military officers imprisoned after attempts on the life of King Hassan II.<sup>40</sup> The Saharan Red Crescent listed more than 800 names of those alleged to have "disappeared".<sup>41</sup> In retaliation, it is believed that the Polisario Front has also held a number of prisoners without trials to the extent of torturing and killing some.<sup>42</sup>

Amnesty International theorizes that, "the phenomenon of disappearance is to imprison or eliminate people against whom the state can either bring no legal charges or else could bring charges but is reluctant to pursue them in court. But "disappearance" as employed in Morocco is also used to create and atmosphere of fear."<sup>43</sup> In Morocco, the Moroccan Security Service (vis-à-vis the national police) along with the gendarmerie, the *Direction de la Surveillance du Territoire*, the *Police Judiciaire* and the *Gendarmerie Royal* are considered the agents of "disappearance".<sup>44</sup>

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<sup>36</sup> Ibid at 218.

<sup>37</sup> Ibid at 244.

<sup>38</sup> Ibid at 226-228.

<sup>39</sup> Disappearance is in inverted comma's to highlight the manipulation and carefully controlled method of arresting individuals and "removing" them permanently

<sup>40</sup> Amnesty International supra at 1

<sup>41</sup> Ibid at 2.

<sup>42</sup> Ibid at 2.

<sup>43</sup> Ibid at 3.

<sup>44</sup> Amnesty International, *Morocco: Breaking the Wall of Silence: The "Disappeared" in Morocco* (New York, NY: Amnesty International, 1993 ) at 1.



Herewith are four cases of "disappearance" in Western Sahara cited by Amnesty International,

A former member of the national resistance army "disappears" in February 1963. A detainee in a torture centre in Rabat sees him in April the same year. After that he is never seen again.

A trade unionist "disappears" from his room in October 1964. The only evidence of his departure are some bloodstains. He is reportedly sighted in secret detention centres in 1979, 1983 and 1989.

A trade unionist in exile in Libya "disappears" on a visit to Tunisia in 1973. There is a strong suspicion that he was kidnapped by the Moroccan security forces. This is confirmed when in July 1975 "Wanted" notices are put up for him and his family's houses are surrounded by police. He had escaped from secret detention with seven other "disappeared" only to be recaptured five days later. He has never been seen since.

A Sahrawi woman, the mother of two children, is arrested by Moroccan security forces in Laayoune in 1976. She has never been seen since.

In Laayoune, in 1976, a Sahrawi woman, the mother of two children, is arrested by Moroccan security forces in Laayoune in 1976. She has never been seen since.<sup>45</sup>

### *Intimidation and Arrest*

Most recently, other forms of abuses were observed during the International Conference on the Rights of Peoples to Resist in Algiers (2008), the Case of Western Sahara. UPES News (2010) reports,

that Moroccan forces of repression besieged Zemla neighborhood in the occupied city of El Aaiun to prevent Sahrawi citizens from receiving the third delegation of Sahrawi human rights activists returning from Algiers. Moroccan intelligence forces took control of all entrances to the house of Sahrawi human rights activist Sidi Ahmed Lamjaid, where Sahrawi citizens poured to attend the reception of the members of the delegation, before Moroccan authorities intervened to prevent dozens of them from accessing the reception venue. According to the Collective of Sahrawi Human Rights Defenders (CODESA), Moroccan authorities blocked alleys by police cars, aid forces and iron barriers, to prevent Sahrawi citizens from going to the reception of the delegation of human rights and international observers coming from Algeria, Spain and Uruguay.<sup>46</sup>

Khalid Ibrahim Khaled (2010) also documents Algeria's arrest of fifty Sahrawis en route to Morocco via Mauritania

*Fifty Sahrawis who were trying to leave Tindouf camps managed by the Polisario Front, were arrested by Algerian army during the night of Monday to Tuesday, has learned the "Polisario Confidential", from a reliable source close to the Guerilla movement leadership. Led by the son of one of the Polisario executives, the group of fifty persons was trying to join Morocco through Mauritania. Alerted by an informer inside Tindouf camps, members from the Algerian intelligence and security department (DRS) have constituted with the Algerian military command in Tindouf, a commando in charge of bringing back the Sahrawis willing to join Morocco. Equipped with jeeps, soft weapons and two MI-24 Russian helicopters, the commando composed of Algerian soldiers from the elite and the DRS "action" service*

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<sup>45</sup> Ibid

<sup>46</sup> "Moroccan authorities prevent Sahrawi citizens from receiving delegation of human rights activists" UPES News (October 1, 2010) online: [http://www.upesonline.info/bodyindex\\_eng.asp?id=279&field=sec\\_eng](http://www.upesonline.info/bodyindex_eng.asp?id=279&field=sec_eng)

members, has crossed the likely roads to have been taken by Sahrawis.<sup>47</sup>The oxymoron of "terrorism" bestowed upon Sahrawis - is the intensity of perpetual bullying of the territory with the erection of the "Wall of Shame" (vis-à-vis the Berm of Western Sahara).<sup>48</sup> Not only is the Berm longer than the Great Wall of China, it encapsulates the whole of the territory with some 120,000 Moroccan troops on guard 24/7. Without conscience, "Morocco maintains live minefields and barbed-wire fences making it impossible for men and animal to move around in the once free desert".<sup>49</sup> Here's to their defense of Sahrawi's not being a colony or prevented from exercising their right to self-determination. The exact issue that submerges Western Sahrawi along the fringes of being internally displaced yet refugees at the same time. Quite complicated situation that requires less wishy-washy diplomatic interventions by UN organizations toward a firm sanction and embargo on Morocco to either comply with international human rights standards by allowing Sahrawis to have their freedom and independence or accepting them as first class citizens.

### Using the Law as Authority to Abuse and Violate Rights

Most of the times society believes that the law is created to protect rights and property. Unfortunately, laws based on discrimination, exclusion, and racism is more readily existent. In fact, it is the clandestine used of such laws (in other words abuse of laws) that fuels injustices, oppression and divisiveness and Sahrawis are no exception to this effect.

In June 1935, a *Dahir* (or decree) was issued concerning control of demonstrations. According to this *Dahir* (contrary to the International Covenant on Civil and Political Rights)<sup>50</sup> a sentence of up to two-year imprisonment could be charged to anyone convicted of "provoking active or passive resistance, wherever or by whatever means, against the application of any laws, decrees, rulings or orders of the public authority; or anyone carrying out an action tending to disturb order".<sup>51</sup> Three *Dahirs* of 1958 regulate associations, the holding of meetings and the press. Article 3 of *Dahir* 1-58-376 (Right to Associate) states, "founded for an illegal cause or object, contrary to laws, good morals, or with the aim of attacking the integrity of the national territory or the monarchical form of state is null and void."<sup>52</sup> *Dahir* 2-58-377 (Public Assemblies) states that persons holding a public meeting (apart from artistic, cultural or sports gatherings) must notify the authorities in advance [and] a government official may be present and may dissolve the meeting if the official feels that it is likely to disturb public order.<sup>53</sup> It is also worth mentioning that under Moroccan Law a suspect can be kept under the supervision of the

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<sup>47</sup> Khalid Ibrahim Khaled, "Urgent : fifty Sahrawis were arrested by an Algerian commando while they were trying to escape from Tindouf» Inside Story of Polisario" (July 3, 2010) online: <[http://polisario-confidential.org/index.php?option=com\\_content&view=article&id=120:urgent-fifty-sahrawis-were-arrested-by-an-algerian-commando-while-they-were-trying-to-escape-from-tindouf-&catid=1&Itemid=19](http://polisario-confidential.org/index.php?option=com_content&view=article&id=120:urgent-fifty-sahrawis-were-arrested-by-an-algerian-commando-while-they-were-trying-to-escape-from-tindouf-&catid=1&Itemid=19)>

<sup>48</sup> Carlos Reyes-Manzo, "Children of the clouds" Messenger of Saint Anthony (2011) online: <[http://www.saintanthonyofpadua.net/messaggero/pagina\\_stampa.asp?R=&ID=376](http://www.saintanthonyofpadua.net/messaggero/pagina_stampa.asp?R=&ID=376)>

<sup>49</sup> Malainin Lakhel, "The Last Colony" The Independent Report (September 25, 2009) online: <<http://www.independentworldreport.com/2009/09/the-last-colony/>>

<sup>50</sup> Article 21 of the International Covenant on Civil and Political Rights, [hereafter ICCPR] people have the right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. Noteworthy, Morocco ratified the ICCPR (1979) in addition to the Convention Against Torture in 1993, and Other Forms of Cruel, Inhuman and Degrading Treatment or Punishment (CAT) the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Convention on the Elimination of All Forms of Racial Discriminations (ICERD).

<sup>51</sup> Amnesty International "Disappearances" supra at 4.

<sup>52</sup> Ibid at 2.

<sup>53</sup> Amnesty International "Disappearances" supra at 4.

police in *garde a vue* detention before trial without access to family, lawyers, or independent doctors.<sup>54</sup> This is one of many legal avenues through such means of abusive laws that Morocco continues to dishonour the United Nations Human Rights Commission and all other legal admonitions request it to allow Sahrawis to exercise their right to self-determination.

### *Torture*

Human Rights Watch and Amnesty International continuously report of the Temara detention centre operated by the Directorate for the Surveillance of the Territory being used as one of the main place where torture is reported to have occurred.<sup>55</sup> This has resulted in Morocco's breach of (inter)national laws thus preventing scrutiny by the judicial authorities.<sup>56</sup> People allegedly tortured are among hundreds of Islamists or presumed Islamists arrested and detained on suspicion of belonging to "criminal gangs" or "terrorist groups". These arrests, totalling 2,000 individuals began in 2002 when the authorities decided to restrain Islamist activists who were planning bomb attacks or were involved targeted killings of people.<sup>57</sup>

On 20 November 2003, the Committee Against Torture having examined Morocco concluded there even though the government had improved its human rights record, there were concerns about torture/ill-treatment and lack of action taken by the authorities to investigate complaints of torture.<sup>58</sup> Improvements in the Government's human rights record were seen in the early 1990s around the same time it ratified the CAT.<sup>59</sup> First it was the release of more than 330 people who had "disappeared" in secret detention for up to 18 years. Another 400 prisoners of conscience and political prisoners were released and more than 190 death sentences were commuted.<sup>60</sup>

### **Discussion**

Western Sahara's on-going struggle break-free from Morocco in order to attain self-determination has been dealt with under the aegis of international law. From the inception of "the question" ("Was Western Sahara (Rio de Oro and Sakiet El Hamra) at the time of colonization by Spain a territory belonging to no one (*terra nullius*)?") to date, Sahrawis have drawn on international law (by way of the International Court of Justice, Human Right Committee, Committee Against Torture etc.,) for protection of their rights. Whether, this process has been efficient or useful is an academic yet legal question requiring serious attention.

History is important. Not only does it attempt to present a holistic picture of situation, it also provides an opportunity to critically examine the past in order to devise possible solution from the present and future. Today, international human rights law appears to be the backbone of seeking justice, equality and liberty. However, the precept of its

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<sup>54</sup> *ibid* at 4

<sup>55</sup> Human Rights Watch, "World Report 2011: Morocco/Western Sahara" online: <<http://www.hrw.org/en/world-report-2011/moroccowestern-sahara>>

<sup>56</sup> Amnesty International, *Morocco/Western Sahara: Torture in the "Anti-Terrorism" Campaign – The Case of Temara Detention Centre* (New York, NY: Amnesty International, 2004) at 1.

<sup>57</sup> *Ibid* at 1

<sup>58</sup> *ibid* at 2

<sup>59</sup> Amnesty International, *Morocco/Western Sahara: Addendum to "Turning the Page": Achievements and Obstacles* (New York, NY: Amnesty International, 1999)

<sup>60</sup> *ibid* at 1

evolution is endowed with discrimination, subjugation, exclusion, and unequal treatment of the so-called "lesser race". To be exact, it was the mental psyche of France and Spain when they began to colonize Sahrawis. The "baton", passed on directly or indirectly to what is now the Moroccan Government and Royal Dynasty, sustains the latent defect of being the explicit source of creating Africa's last and only colony.

Nirmal (1999) critical assessment of the emergence of international law raises provocative thoughts but yet necessitate constant scrutiny around the "mental psyche" of Morocco's Government. In other words, what is their real reason of blatantly occupying an independent territory and/or subjecting its "citizens" to such, cruel, degrading and inhuman treatment/punishment? Nirmal argues that international law as it stands today is a product of the European Western-Christian civilization; although in the beginning Europeans were prepared to acknowledge some limited rights to non-European countries under the European system.<sup>61</sup> As result of development of *Eurocentricism*<sup>62</sup> in terms of legal/political thinking Western powers assumed the role as international legislator and they divided the mankind into the "civilized and uncivilized" and "Christian and non-Christian peoples". The latter, the so-called 'primitive', 'native', 'backward', non-civilized', 'semi-civilized', and 'non-Christian' peoples or communities were reduced to objects of foreign dominations.<sup>63</sup>

With time, Western powers began to assert superiority of White races over the Black races and sought to justify their control and rule over the backward territories and regions on the basis of 'Whiteman's Burden' to make the latter civilized and self-reliant. There were references to 'pity for the poor natives', 'need to convert natives to Christianity' and 'civilize barbarians.'<sup>64</sup> This is the underlying principle under which International law evolved during colonialism in Africa. In helping the "savages" civilized, they not only dominated their colonies, but also exploited their resources. But of course, application international law in these colonies was impossible as they did not possess statehood or even if they did, they were unfamiliar with the "full requirements of civilization."<sup>65</sup>

In general, human rights is shared equally by everyone regardless of sex, race, nationality, and economic background. They are supposed to be rights held by individuals simply because they are part of the human species, one can't help but conduct theoretical analysis in an attempt to decipher possible justification for Morocco's adamant behaviour with respect to granting Sahrawis their freedom.<sup>66</sup> To assist I draw from Micheline Ishay's conception on the four main controversies of human rights:<sup>67</sup>

1. Modern conception of rights is predominantly European in origin.

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<sup>61</sup> B. C. Nirmal supra at 9

<sup>62</sup> According to the Merriam-Webster Dictionary, Eurocentrism means centered on Europe or the Europeans; *especially*; reflecting a tendency to interpret the world in terms of western and especially European or Anglo-American values and experiences.

<sup>63</sup> B. C. Nirmal supra at 9

<sup>64</sup> Ibid at 10.

<sup>65</sup> Ibid at 10.

<sup>66</sup> Micheline R. Ishay, *The History of Human Rights: From Ancient Times to the Globalization Era* (Berkeley: University of California Press, 2004) at 3.

<sup>67</sup> Ibid at 5-6.

2. Viewing religion as antithetical to a secular view of universal rights is problematic because each religion contains important humanistic elements that anticipated our modern conceptions of rights. This does not mean that all religious contributions were equal, however, or that there is a perfect continuum from ancient to modern thinking about human rights.
3. Cultural rights are necessary defenses against either liberal or socialist conceptions of human rights, since these conceptions presumably represent the oppressive legacy of Western domination of the rest of the world.
4. The demands for cultural rights must always be informed by and checked against a universalist perspective of human rights.

Indeed, Ishay's controversies offer some exit points in this analysis with specific regard to the origin of international law. However, Western Sahara's struggle for freedom is deeply situated within the principle of self-determination. The genesis for the norm of self-determination traces back to the American Declaration of Independence of 1789 and was echoed in the French Revolution a few years later in which the French National Assembly declared on 17<sup>th</sup> November 1792.<sup>68</sup> Along these lines, Castellino identifies two schools of thought in consideration of attaining self-determination under international law. According to him, self-determination which identifies the nation as the State is the classical, or Hobbesian conception of self-determination based on the assumption "that the authentic expression of human nature in primitive communities is something essentially negative" and needs to be channelled into formally organized States to prevent *bellum omnium* (the war of all against all). Nations are thus artificial communities, a collection of individuals who are linked principally by the existence of a state decision – a procedure, which makes it possible for them to participate in the conduct of their common affairs within the State. Thus, the presence or absence of those procedures and their proper functioning is at the core of national self-determination. Anything else is destructive, irrational passion.<sup>69</sup>

His second model of self-determination is the secessionist sense. With a 'romantic' feel to it, this school of thought is based on Rousseauian ideas. It conceives of nationhood as something more basic and fundamental than merely decision making processes. It is concerned less with how the popular will is expressed, 'more to what end it is exercised, whether it participates in the natural life form appropriate for each nation as an authentic (and not artificial) community. It views primitivity as a virtue that was lost in the political struggles that organized itself into a State.<sup>70</sup>

Despite the historical concepts of the principle of self-determination, Articles 1(2) and 55 of the UN Charter recognize it, with special attention to the processes of decolonization. The 1920 Decolonization Declaration, while recognizing the right to self-determination of all peoples, reaffirmed the principle of territorial integrity. The contention at stake gave rise to the question of supremacy of the principle of self-

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<sup>68</sup> B. C. Nirmal supra.

<sup>69</sup> Joshua Castellino, supra at 9.

<sup>70</sup> Ibid at 9.

determination over that of territorial integrity.<sup>71</sup> But should there be disagreement when Morocco fully understands Paragraph 6 of GA Resolution, 1514 states that “Any attempt aimed at the partial disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations”<sup>72</sup> Following, is a closer look at the roles the United Nations, the Organization of African Unity (now African Union) and Spain have played in “decolonization” process of Western Sahara, a convenient yet strategic political phenomenon by which consideration of this population as being internally displaced and/or refugee have been gravely undermined.

### **The UN Intervention**

After the year of the United Charter (1945),<sup>73</sup> Western colonizers have refrained from using “colonies” to areas they once colonized. Rather, “colony” is replaced with “dependent territory” or “territories” and “colonizers” with “occupation”. However, “the process that leads toward ending political dominion by colonial powers [in] overseas territories, and which intends to open possibilities for free political, economic, social and cultural development”<sup>74</sup> vis-à-vis “decolonization” is more frequently used. In the UN legal system “colonies” is synonymously used with *Non-Self-Governing Territories* (NSGT).<sup>75</sup>

The UN qualified Western Sahara as a NSGT in 1963 when Western Sahara was a Spanish Colony – implying that Sahrawis had the right to exercise their inalienable right to self-determination and to decide the status of their territory in a free, democratic and genuine way. Over the years of conflict, despite Morocco’s stronger military power over Western Sahara, they realized the military imposition was impossible, hence chose the self-determination referendum route as a viable and sensible solution. With hope in sight, the UN deployed the United Nations Mission for the Referendum in Western Sahara (MINURSO)<sup>76</sup> in 1991, a total of 1,000 civilian and 1,700 military personnel – to guide the referendum process. Unfortunately, Morocco started to default despite its earlier commitment to the referendum as a democratic solution. This led to the UN suspension of the identification process in May 1996.<sup>77</sup>

At stage III, the peace process was reactivated as a result of US Secretary of State James Baker’s initiated talks between Polisario and Morocco in London, Lisbon and Houston in

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<sup>71</sup> B. C. Nirmal supra at 166.

<sup>72</sup> Ibid at 167.

<sup>73</sup> Roger S. Clark, “Western Sahara and the United Nations norms on self-determination and aggression” in Karen Arts & Pedro Pinto Leite, *International Law and the Question of Western Sahara* (Leiden: Ainho & Neves, 2006) at 46.

<sup>74</sup> Steven Hillebrink, *The Rights to Self-Determination and Post-Colonial Governance: The Case of the Netherlands and Antilles and Aruba* (The Hague: T. M. C. Assers Press, 2008) at 3.

<sup>75</sup> Ibid at 11

<sup>76</sup> The United Nations Mission for the Referendum in Western Sahara (MINURSO) was established by Security Council resolution 690 of 29 April 1991 in accordance with settlement proposals accepted on 30 August 1988 by Morocco and the Frente Popular para la Liberación de Saguia el-Hamra y de Río de Oro (Frente POLISARIO). The settlement plan, as approved by the Security Council, provided for a transitional period for the preparation of a referendum in which the people of Western Sahara would choose between independence and integration with Morocco. The Special Representative of the Secretary-General was to have sole and exclusive responsibility over matters relating to the referendum and was to be assisted in his tasks by an integrated group of civilian, military and civilian police personnel, to be known as the United Nations Mission for the Referendum in Western Sahara. (See, <http://www.un.org/en/peacekeeping/missions/minurso/>).

<sup>77</sup> BBC News, “Regions and territories: Western Sahara” (November 9, 2010) online: <[http://news.bbc.co.uk/2/hi/africa/country\\_profiles/3466917.stm](http://news.bbc.co.uk/2/hi/africa/country_profiles/3466917.stm)>

1997, then in London again in 2000.<sup>78</sup> Agreements were reached on the release of POWs and codes of conduct developed for a referendum campaign. With challenges, a new "Framework Agreement", known as the *Third Way*, was designed in June 2001. Polisario and Algeria rejected the formula, forcing the UN to adopt a compromise resolution proposing that Western Sahara become a semi-autonomous region of Morocco for a transition period of up to five years. Polisario accepted this proposal, however Morocco rejected. Consequently, James Baker resigned in June 2004 and the UN process remains deadlocked.<sup>79</sup>

The current stage (starting in 2006) saw Moroccan's ultimate rejection and utter disregard for its obligation to international law – announcing that idea of the referendum had become "obsolete". Therefore, "Morocco continues to pursue a colonial policy aimed at suppressing the Saharawi legitimate aspirations by intensifying its repressive practices in the Saharawi territories under its occupation, while plundering their natural resource".<sup>80</sup>

In 1975, the International Court of Justice indicated that although evidence short of establishing ties of Sahrawi's territorial sovereignty to Spain was not sufficient to support historic claims; it noted that the right of the Sahrawi people to self-determination constituted a basic assumption of the question put to the Court.<sup>81</sup> Since September 1991 the UN began what was scheduled to be a six-month operation to supervise a referendum on the future of the Western Sahara. Twenty (20) years later, no referendum has been held. However, upon admission of the SADR to the OAU the UN assumed the responsibility of finding and implementing a comprehensive settlement plan with little or no luck.<sup>82</sup>

### **The Role of OAU/AU**

Historically, African governments through the Organization of African Unity/African Union (hereafter AU) have used the formal institutions structures of the UN system in several instrumental ways. Whenever the AU can create a common position on an issue before the *General Assembly* (GA), the African group becomes an essential element in any consensus.<sup>83</sup> The case in point is the recognition of the Sahrawi Arab Democratic Republic (here after SADR).<sup>84</sup>

The AU had been considering the struggle of Sahrawis since 1964 when it advocated for decolonization - an approach consistent with its struggle to free Africa from all forms of colonialism in accordance with Article 2(1)(d) of the OAU Charter. Drawing on the Pan-Africanism ideological in the early 1960s, the political and spiritual affinity felt by all black peoples was characterized by the post-war struggle for independence where African-ness became a potent force. The launch of the OAU at a meeting of most African

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<sup>78</sup> Sidi M. Omar, "The position of the Frente Polisario" in Karen Arts & Pedro Pinto Leite, *International Law and the Question of Western Sahara* (Leiden: Ainho & Neves, 2006) at 38.

<sup>79</sup> BBC News supra

<sup>80</sup> Sidi M. Omar supra at 39.

<sup>81</sup> B. C. Nirmal supra at 182.

<sup>82</sup> Gino J. Naldi, *The Organization of African Unity: An Analysis of its Role* (London: Bookcraft, 1999) 2d ed.

<sup>83</sup> Leon Gordenker, "the UN and political cooperation in Africa" in Domenico Mazzeo, *African Regional Organizations* (Cambridge: Cambridge University Press, 1984) at 17.

<sup>84</sup> African Union Member States (See, <http://www.au.int/en/content/republic-arab-saharawi-democratic>).

men leaders in Addis Ababa in May 1963 was an impressive achievement by any standards.<sup>85</sup>

As decolonization progressed, by its very existence and the principle of universal membership, the UN system offered unprecedented opportunities for diplomatic and other forms of interaction, particularly on those issues related to national liberation, racial equality and some aspects of economic relations with industrialized countries.<sup>86</sup> In colonial Africa the law was central as perceived, conceived and implemented by Europeans. Colonialism sought to impose a new moral as well as political and economic order, relegating European legitimized belief that they were in Africa for local's own good.<sup>87</sup>

It is with such introspection, that on May 25, 1963 the independent States of the African Continent brought to a close the Conference of Heads of States and Government meeting in Addis Ababa, Ethiopia, by adopting the constituent charter of a new international body, the Organization of African Unity (OAU).<sup>88</sup> By 1976, the OAU submitted itself to endorsing UN resolutions reaffirming the right of the Sahrawi people to self-determination. The OAU Charter, signed originally by thirty-two States, emphasizes the respect for sovereignty of the Member States a view Morocco has "romanticized" with upon AU's admission of SADR in 1984. Consequently, Morocco's and Mauritanian threatened to withdraw from the AU posing one of the most serious political crises to date for the organization.<sup>89</sup>

To dilute this threat, a compromise resolution was adopted whereby each Member State was rendered free to grant or withhold recognition of the Polisario Front. Nevertheless, in a significant victory for the Polisario Front, the conference noted that the Sahrawis had exercised their right to self-determination by creating the new republic, the SADR (p58). Just as the 27<sup>th</sup> Session of the OAU Council of Ministers held in Port Louis, Mauritius on 24 June 1976, the 14<sup>th</sup> Assembly of Heads of States and Government held in Libreville, Gabon in July 1977 proved similarly disruptive as Gabon's President refused a Sahrawi delegation entry into the country. By 1978, the OAU made a brave attempt to address itself effectively to the Western Sahara dispute. During the 15<sup>th</sup> Assembly held in Khartoum in July 1978 the Assembly adopted resolution AHG/Resolution 92 (XV), which introduced a significant development. An *ad hoc* committee with at least 5 Heads of States chaired by President Numeiri of Sudan, was entrusted with the task of seeking a solution to the dispute compatible with the right of self-determination (p60).

The Ad Hoc Committee, also known as the Committee of Wise Men, held its constitutive session on 1 December 1978 in Khartoum. Following a two-day meeting a sub-committee, consisting of Presidents was established with the mandate to visit the region and contact all the parties interested and concerned in the dispute. After meeting the sub-committee presented a report in June 1979 which overall was favourable to Sahrawi

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<sup>85</sup> Gordon Harris, *The Organization of African Unity* (New Brunswick: Transaction Publishers, 1994).

<sup>86</sup> Domenico Mazzeo, "Introduction: the regional trend" in Gino J. Naldi, *The Organization of African Unity: An Analysis of its Role* (London: Bookcraft, 1999) at 1.

<sup>87</sup> Richard Roberts & Kristin Mann, "Law in colonial Africa" in Kristin Mann & Richard Roberts, *Law in Colonial Africa* (Portsmouth, NH: Heinemann, 1991).

<sup>88</sup> Gino J. Naldi supra at 1.

<sup>89</sup> Ibid at 3.



cause. Consequently, it made recommendations with the most obvious being “the withdrawal of all Moroccan troops from the Western Sahara” (p61). The Implementation Committee was established under Resolution 103 (XVIII) 1981 with the purpose of working out, in collaboration with the parties to the conflict, the modalities and all other details relevant to the attainment of a cease-fire and the conduct and administration of a referendum; and its mandate was to participate with the UN in taking all necessary measures to guarantee the exercise by the people of Western Sahara of self-determination through a general and free referendum (p63). Eventually, all the suggestions advanced by the various committees met with serious difficulties. Morocco and the Polisario Front adopted mutually irreconcilable positions, which gave little hope for a peaceful solution.<sup>90</sup>

Nevertheless, the OAU Assembly endorsed the Implementation Committee's endeavours. At its Nineteenth Ordinary Session held at Addis Ababa in June 1983 the Assembly called upon the Implementation Committee to secure a cease-fire and to make preparations for the referendum, scheduled for December 1983, and it called upon the UN, in conjunction with the OAU, to provide a peacekeeping force for the duration of the referendum. Morocco subsequently refused to co-operate in the holding of the referendum by the specific date, which led the OAU to seat the SADR at its Twentieth Ordinary Session held at Addis Ababa in November 1984. Morocco withdrew from the OAU in protest.<sup>91</sup>

### **The Role of Spain**

The question of the current international status of Spain in relation to Western Sahara, requires, on the one hand, an analysis of the international legal situation of the territory of Western Sahara, and on the other hand an analysis of the status of Morocco, as the current occupant of that territory. The law applicable to this question is contained, in the UN Charter, in GA resolutions pertaining to decolonization, in treaties concerning Western Sahara and in the 1969 Vienna Convention on the Law of Treaties. The applicable Spanish legislation should also be taken into account to clarify any possible responsibilities of Spain in relation to the present situation in this territory.<sup>92</sup>

The paper has provided evidence to point towards the fact that, there were no natural borders, apart from the sea the Atlantic coastline when Spain colonized the territory. The wanderings of the Sahrawi tribes took them throughout Western Sahara and into what are now the countries of Mauritania, Algeria, and Morocco. The French capture of Timbuktu in 1894 enabled France to steer much business to the port of Saint Louis in Senegal. Europeans adventurers are recorded to have landed near Cape Boujdour as early as 1405, when they attacked a caravan there. More raids followed along the Saharan coast; there was also an attempted peaceful barter. The Saharan tribesmen fiercely resisted any encroachment by foreigners, and the earliest European settlements were limited to peripheral, insecure footholds on the coast.

In 1476 the Spaniards, reinforced their presence with a fort as Santa Cruz was seized by

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<sup>90</sup> David Seddon, “Western Sahara: making haste slowly – little progress towards the referendum” (1996) 23 *Review of African Political Economy* 67 at 103-106

<sup>91</sup> Gino J. Naldi *supra* at 65

<sup>92</sup> Eduardo Trillo de Martin-Pinillos, “Spain as administering power of Western Sahara” in Karen Arts & Pedro Pinto Leite, *International Law and the Question of Western Sahara* (Leiden: ainho & Neves, 2006) at 79.

Sahrawis in 1517 but was quickly retaken in 1524. There was not to be another Spanish settlement on the Saharan coast until 1884, at the Berlin Conference when Europeans *Scrambled for Africa*. In 1900 France and Spain signed a convention delimiting their respective possessions in the Saharan coastal region.<sup>93</sup> The European powers continued to bicker until the 1930s, when Spain took hold of a number of territories in northwest Africa including the ancient enclaves of Mellila and Cueta and Ifni and Spanish Southern Morocco to the South – the exact same region the UN Decolonization Committee<sup>94</sup> suggested that they had the right to freedom from colonial domination and called on Spain to enter into negotiations on the problems relating to sovereignty of these Territories.<sup>95</sup>

In 1965, the GA first resolution was adopted on Western Sahara - calling on Spain to implement the right of the Sahrawis to self-determination. In 1966 Spain accepted the applicability of the principle of self-determination of Western Sahara, but it procrastinated in the organization of a referendum, which partly led to the emergence of Sahrawi nationalism, thus the founding of the Polisario Front in 1973. Sporadic guerilla warfare and deteriorating diplomatic relations with its North African neighbours continued until 1991 when the UN MINURSO launched its settlement plan.<sup>96</sup> To date, Spain has relinquished its colonial authority over Western Sahara.

### **Resistance to and Resilience in Forced Displacement**

Sahrawi resistance to and resilience in forced displacement and confinement by Moroccan government lie in the heart of their identity, which is rooted in their language, oral history, tribal councils, religious practices and the traditionally nomadic lifestyle. The evolution of Saharawi national identity is characterized by generations engaged in conflict with external enemies, which over the years have demanded new forms of resistance. Toby Shelley (2006)<sup>97</sup> brings out iconic legends who are considered forces of resistance amongst Sahrawis. The earliest of such icon, Shelley asserts, is *Ma' el 'Aineen* who coordinated resistance to the French as they made inroads to the north, south, and east of the Western Sahara from the 1880's onward. The second icon, he recognizes) is *Mohammed ould el Hadj Brahim ould Lebssir*, known as *Bassiri*, born in Tan Tan (one of the town under the colonial divisions). He was evacuated north by fighters in 1957 and later ended up studying in Cairo and Damascus.<sup>98</sup>

According to Shelley, *Bassiri* created *Harakat el Tahrir* a movement that did not lose touch with their traditional nomadic and farming communities. The emergence of the Polisario after the crushing of *Haraka el Tahrir* also led to Spain handing over Western Sahara to Morocco and Mauritania. As a result, large number of Sahrawis fled into Algerian territory for protection. Certainly, recognition of *El Ouali Mustapha Sayed*, a Sahrawi nationalist who was the co-Founder of the Polisario Front and the first

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<sup>93</sup> Gino J. Naldi supra at 23.

<sup>94</sup> The United Nations and Decolonization. (See, <http://www.un.org/en/decolonization/specialcommittee.shtml>).

<sup>95</sup> Erik Hagen, "International participation in the phosphate industry in occupied Western Sahara: the local content and global participation" in Karen Arts & Pedro Pinto Leite, *International Law and the Question of Western Sahara* (Leiden: ainho & Neves, 2006) at 24-25.

<sup>96</sup> Gino J. Naldi supra at 53.

<sup>97</sup> Toby Shelley, "Resistance and colonialism: building the Saharawi identity" in Karen Arts & Pedro Pinto Leite, *International Law and the Question of Western Sahara* (Leiden: Ainho & Neves, 2006) at 31.

<sup>98</sup> Ibid at 33.

President of SADR, cannot be downplayed. Clearly, the achievements made by Polisario with respect to on-going resistance and struggle for their independence is laudable.<sup>99</sup>

## **Conclusion**

This paper attempts to provide enough historical and legal evidence around the philosophical and political mindset of various stakeholders with regard to the principle of self-determination in Western Sahara. The careful and strategic manipulation of Morocco's subversion of international law leaves the legal fate of Sahrawis between the space of internal displacement and refugeehood. I do not suggest solutions other than provoking thoughts and bringing a bit more awareness to the issue. Without a doubt, Morocco appears to be their single impediment to Sahrawis full and free independence. The UN Secretary General, Ban Ki-moon attested to this fact in stating that the "importance of the direct negotiations between Polisario Front and Morocco in order to reach to a just and final solution to the Saharawi cause enabling the Saharawi people of its inalienable right of self-determination, in his report to the UN Decolonization Committee.<sup>100</sup>

As we engage in academic exercises like these, talks continue to be scheduled by the UN.<sup>101</sup> Makes to wonder, how many more deadlock talks do Sahrawi people have to endure in order to prevent Morocco from making them Africa's last colony of displaced people and refugees?<sup>102</sup>

Fifteen years since the Cold War ended, another global confrontation casts its shadow over Western Sahara. The prospect of a peaceful resolution of the conflict remains elusive, prolonging the pain of those who survive in refugee camps with ever-diminishing hope. The core question is still: who will decide the future of Western Sahara?<sup>103</sup>

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<sup>99</sup> Ibid at 34.

<sup>100</sup> Joshua Castellino supra at 257.

<sup>101</sup> Another United Nations-backed informal talks between the parties to the Western Sahara dispute, Morocco and the Frente Polisario is scheduled for 19 to 21 July by invitation of the Personal Envoy of the Secretary-General for Western Sahara, Christopher Ross. Also included are representatives from Algeria and Mauritania. (See, <http://www.speroforum.com/a/57105/Next-round-of-UNbacked-talks-on-Western-Sahara-slated-for-next-week>).

<sup>102</sup> UN General Assembly, "Western Sahara: 'last decolonization process in Africa' Fourth Committee Told" (October 6, 2010) online: <<http://www.un.org/News/Press/docs/2010/gaspd452.doc.htm>>

<sup>103</sup> Erik Hagen, "International participation in the phosphate industry in occupied Western Sahara: the local content and global participation" in Karen Arts & Pedro Pinto Leite, *International Law and the Question of Western Sahara* (Leiden: ainho & Neves, 2006).