

WESTERN SAHARA CASE STUDY: THE SAHRAWI ARGUMENT FOR SELF DETERMINATION

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Abstract: The article whirled around the Western Sahara Dispute and fundamentally deals with the standpoint hastened by the Frente Polisario Front proclaiming SADR on the denial of the right to self-determination to the Sahrawi people and how the UN green signal to holding a referendum lost via knockout in a bout with the green march from the Moroccan side and how from then on the momentum transposed towards the Kingdom's side and eventually lead to the signing of the Madrid Accords. Since then how through a resurgent movement the Sahrawi's lead by the Polisario Front is building up a case for the self-determination on diplomatic, legal, economic and cultural fronts is what this study tends to forward.

Keywords: Human Rights, Self-Determination, Referendum, Terra Nullius, Eco-Political.

Introduction: The lingering dispute between the Frente Polisario Front proclaiming SADR (Sahrawi Arab Democratic Republic) and the Kingdom of Morocco whirled around the territory of Western Sahara. It emanated in the 19th century when the Europeans were leisurely colonizing Africa. The Colonization being hastened was overseen by the Berlin Conference of 1884 in order to avoid any conflict among the Europeans. By 1914, ninety percent of Africa was under their control, while the majority of the area went to the French and the British. Western Sahara an area of approximately 2,66,000 km² was given to Spain.

On the establishment of the UN after World War II colonization slowly and steadily was losing rationale and the UN also went all out to promote International peace and harmony, due to which it got fundamentally against colonization as stated in Article 73 of the UN Charter. Throughout the 1960s the UN made an effort to decolonize the African continent through Resolution 1514. By the late 1970s, the entire continent had been decolonized except for the region called Western Sahara.

In 1973, the Polisario Front got established and claimed to end the Spanish colonial rule in Western Sahara and fight for the right to self-determination and independence of the indigenous Sahrawi people. During that time the region was being averted by four parties' i.e. Spain, Morocco, Mauritania and lastly The Polisario Front. During that same period, Spain was being pestered by the UN to decolonize Western Sahara (at that time Spanish Sahara); Spain eventually agreed on decolonizing Western Sahara and decided to hold a referendum so that the Sahrawi people could choose between the Frente Polisario, Morocco, and Mauritania. But on the other hand, Morocco requested the referendum be postponed calling for a hearing from the ICJ regarding Moroccan sovereignty over Western Sahara and this request later got the official stamp.

But the UN visiting mission to Western Sahara found a stupendous census towards a referendum. In some time the UN published its advisory opinion and the ICJ acknowledged that Morocco and Mauritania had historical ties with the region but nothing would pertain to any legal sovereignty.

The referendum thus was officially given the "Green Signal" but it eventually had a faceoff with the "Green March". As hours after the court's opinion, Morocco began organizing this march, it manifested 3,00,000 Moroccan people being steered by 20,000 Moroccan troops in Western Sahara, this was done to put pressure on Spain to transfer sovereignty to them on the other hand there was no resistance at all from the Spanish forces as they entered Western Sahara. Major conflicts started erupting between the

two major stakeholders Frente Polisario and Morocco and lead to the Western Sahara War in 1975 (which continued till 1991).

Meanwhile after the Madrid Accords of 1975 (A temporary tripartite administration in which Spain handed administrative control of Western Sahara over to Morocco and Mauritania) when Morocco and Mauritania started moving in Western Sahara; they were heavily resisted from the Polisario troops with significant backing from Algeria. By the 26th of February, all Spanish forces moved away from the territory. The very next day the Polisario Front on 27th February 1976 proclaimed The Sahrawi Arab Democratic Republic (SADR) claiming Western Sahara as their land.

In 1979 Mauritania and SADR signed a peace treaty and Mauritania deserted all claims to Western Sahara, but after that Morocco quickly moved in the land left. Simultaneously, in 1982 the Sahrawi Arab Democratic Republic was admitted to the Organization of African Unity (OAU) as the government of Western Sahara. In effect of that Morocco withdrew its membership.

In 1991 after nearly 16 years of war, Morocco and the Polisario Front signed a ceasefire agreement; a part of the ceasefire agreement was that referendum would take place within 6 months under the MINUSRO mission.

But till now nothing has happened, currently, Morocco controls eighty percent of the area and The Frente Polisario Front exiled in Algeria controls the remaining twenty percent.

The Argument:

The Question of Terra Nullius (Land Belonging to No One): On this question, the stand of the Sahrawi's has been lucid and many advocates have laid stake to the claim that Rio de Oro and Saguia-el-Hamra two territories which formed part of the Spanish province of Spanish Sahara (now Western Sahara), is not at all terra nullius. And according to them this issue in its totality does not aver that the territory belongs to Morocco. In relation to the contention raised; on 13th December 1974, The United Nations General Assembly passed resolution 3292 which requested an advisory opinion in relation to this very dispute, one of the questions on which the advisory opinion was requested was 'Whether Western Sahara (Rio de Oro) and (Saguia El Hamra) at the time of colonization by Spain was a territory belonging to no one (terra nullius)?'. The court held that "Colonization by Spain started from 1884 when it proclaimed a protectorate over the territory." Therefore the court interpreted 'terra nullius' by citing the law in force at that time as an Inter-temporal law which refers to the law international courts apply to evaluate revisions in international law after the formulation of a treaty and alterations in the meaning of expressions in the treaty. Thus, it held that the state practice of the relevant time indicated that territories inhabited by tribes or people having a social and political organization were not regarded as 'terra nullius'. It was also held that Western Sahara during Spanish colonization was inhabited by people who were mostly tribal and under chiefs adept to represent themselves. In other words, the International Court of Justice in that advisory opinion determined that Western Sahara belonged to the Sahrawi people and not Morocco before colonization.

The Fraudulent Transfer and The Illegality of Morocco's Claims: Although most African countries became independent in the 1950's and the 1960's, Spain refused to recognize the right of the Sahrawi people to self-determination. Finally, in 1963 in accordance with The General Assembly Resolution 1541 & 1542 and also Article 73(e) of Chapter XI: Declaration regarding Non – self-governing territories of the General Charter of the United Nations, Western Sahara was declared a non-self governing territory. In spite of the claims of Spain, The UN General Assembly passed Resolution 2072 for the liberalization of Western Sahara in 1965. And finally, the struggle of the Sahrawi people coupled with international solidarity forced Spain to quit Western Sahara in 1975. But instead of decolonizing it, the territory got handed over to Mauritania and Morocco with the help of an agreement called the 'Madrid Accords'. But most of the Sahrawi activists claim it to be a fraudulent transfer. Referring to a letter dated 29th January, 2002 from the Under-Secretary-General for Legal Affairs, The Legal Counsel; Addressed to the president of the Security Council and emphasizing on the letter's 6th and 7th point it can be said that Morocco's claims on Western Sahara can be challenged strongly and even top officials of the U.N. accepted that.

“The Under-Secretary-General for Legal Affairs (Hans Correl) forwarded a letter to the President of the Security Council and in its 6th and 7th point had stated that The Madrid Accords did not shift sovereignty over the territory and also did not bestow upon any party the status of the administering power, and that Spain could not have unilaterally transferred it. And also stress was put on the fact that the transfer of the territory to Morocco and Mauritania in 1975 did not affect the international status of Western Sahara being a Non-self governing territory and even if Morocco has administered the territory alone upon the conclusion of the Mauritano-Sahrawi agreement of 19th August 1979, it is not listed as the administering power of the territory in the UN list of Non-self governing territories.”

The same was also confirmed by a Spanish national research institute called The Elcano Royal Institute of International & Strategic Studies (Spanish Government think tank), In a report dated 5/4/2014 named ‘The international dimension of the conflict over Western Sahara and its repercussions for a Moroccan alternative’.

Also, Resolution AHG1Res.16 (1984) passed by the OAU (Organization of African Unity) which solemnly declared that all member states pledge themselves to respect the borders existing on their achievement of national independence. When OAU changed to AU (African Union) it also included the same concept in its constitutive act, Article 4(b) which states that the AU shall ensure the respect of the borders existing on achievement of independence. And when Morocco gained independence in 1956, Western Sahara was not a part of Morocco. But no matter what Morocco’s policymakers stand for; most critics and commentators are of the view that the AU provisions apply to Morocco as it was a founding member of the OAU and when this resolution was passed Morocco’s representatives were present there and they gave it the green signal.

The advisory opinion dated 21st June 1971 on the illegal occupation of Namibia by South Africa, is also important in this argument as when South Africa had occupied Namibia (almost as similar to Morocco’s occupation of Western Sahara; An advisory opinion was requested by Namibia and in the judgement South Africa was terminated as the administrator of the territory of Namibia on the basis of violation of various international laws and many believe that the same criteria appertains to Morocco.

Self Determination for the People of Western Sahara: Self-determination is a basic right in international law which states that the people collectively have a right to determine their own statehood or as to who should govern them and all this should be applicable to Western Sahara as the people living there believe that they also form part of the International law.

On the founding of the UN in 1945, Article 1(2) of its Charter specified that one of the purposes of the organization was to develop friendly relations among nations based on the respect for the principle of equal rights and self-determination for the people and to take others appropriate measures to strengthen universal peace.

Chapter XII of the International Trusteeship System in Article 76 states that the basic objects of the system are to promote the will of the people and to abide by their wishes even to the extent of self-determination or independence.

Article 73(e) of Chapter XI: Declaration regarding Non-self governing territories also states that they are subject to self-determination.

And as General assembly resolution 1541 & 1542 declare Western Sahara a “Non-self governing territory” the article is applicable to Western Sahara.

In particular General Assembly resolution 1541 (XV) of 14th December 1960 containing the declaration on granting independence to colonial countries and it affirmed that ‘all people’s have the right to self-determination, and with the help of this very right they can blatantly determine their political status and can pursue their development.

General Assembly Resolution 2625 (XV) of 24th October 1970 stated that Colonization was a crime and right of self-determination a right; But till now neither colonization has ended by way of illegal Moroccan annexation nor the right of self-determination is initiated.

General assembly 1654 (XVI) of 27th November 1961 stated that Immediate steps shall be taken in Trust and Non-self governing territories which have not attained freedom, to shift all powers to the men and women of those territories, without any limitations and without any distinction as to race, creed or color.

General Assembly Resolution 2229 of 20th December 1966 reaffirmed the inalienable right of the people of Spanish Sahara to self-determination in accordance with the resolution as stated earlier.

General Assembly Resolution 2072 on 16th December 1965 also confirmed the right of self-determination.

Article 1 (3) of the International Covenant on Economic, Social and Cultural Rights also affirms the right to self-determination to Non-self governing territories.

Article 1 & 2 of The Universal Declaration of Human Rights, 1948 also declares self-determination as a basic human right.

It is also noted that The Additional Protocol 1 of the Geneva Conventions of 1949 (1977); clearly recognizes self-determination as a right in International Law under Article 1(4).

On the other hand, there have been plenty, ICJ opinions relating to the recognition of the principle of self-determination.

Firstly the ICJ acknowledged the right to self-determination in its Namibia opinion 1971 as stated earlier. Then the court moved one step further in The East Timor Case (Portugal Vs Australia) by stating that Portugal's allegations of self-determination being of erga omnes nature are irreproachable. The court also defined that right of self-determination is 'one of the essential principles of contemporary international law.

Also in the earlier mentioned Advisory opinion on Western Sahara 'The court also stated that the principles of self-determination shall be applied in the territory of Western Sahara through the genuine and free expression of the will of the people of the territory.

Thus, these international laws and opinions by the ICJ lay stake to the claim that the people of Western Sahara have a right of self-determination.

The Referendum that Never Happened: In the mid 80's, The UN Secretary General Perez de Culler in a joint effort with the OAU (Organization of African Unity) and its AHG/Resolution 104 (XIX) initiated a mission of good offices which lead to a ceasefire agreement in August of 1988 and was duly accepted both Morocco and the Frente Polisario Front.

On 29th April 1991, The UN Secretary Council in its resolution 690 decided to establish The United Nations Mission for the Referendum in Western Sahara (MINURSO), the mission was mandated to monitor the ceasefire and identify as well as register voters for the referendum. But after nearly 40+ Reports in 26 years by different secretary generals from 1991 to 2017 the mission has been extended almost close to 37 times.

There were various plans launched which ultimately failed:

1. UN-OAU Settlement Plan of 1990-91
 - The Settlement Plan was a plan jointly initiated by the OAU and the UN and the referendum accordingly to this plan was to take place in 1992. But due to Morocco's obstruction on the

number of voters who would participate in the referendum the plan could not become a reality and simultaneously Perez de Culler (The UN General Secretary at that time) stepped down after its failure.

2. Houston Agreement (1997)
 - The talks to this agreement were conducted in Houston, USA between The Polisario Front and Morocco under the watchful eye of the UN representative James Baker, using the framework of the 1991 Settlement Plan. The agreement was supposed to have lead to a referendum in 1998 but due to Morocco's obstruction in relation to bizarre issues, it never happened.
3. Baker Plan I or Framework Agreement
 - The UN Security Council in resolution 1301 (2000) reaffirmed the people in relation to conducting a referendum but later took a U-turn in Baker Plan I when instead of offering full independence it offered the people of Western Sahara autonomy within the Moroccan state. After a lot of criticism from the international media, the plan was scrapped.
4. Baker Peace Plan or Baker Plan II
 - James Baker presented a proposal which he believed was in the interest of all the parties to the dispute. It proposed a UN-organized referendum in which the voters choose between integration with Morocco, autonomy or independence. In the interregnum, a Polisario backed authority would preside over the local government and Morocco would control national security and foreign relations. The Polisario Front accepted it but again Morocco objected and declared that it would only accept regional autonomy as the solitary solution. After that James Baker resigned in 2003.

Many negotiations happened after the unsuccessful Baker Plan II, like the Manhasset negotiations of 2007-08 but nothing significant happened due to Morocco's obstruction. Morocco even went to the extent of framing their own plan 'The Western Sahara autonomy proposal (2006)' proposed by their advisory council The Moroccan Royal Advisory Council for Saharan Affairs (CORCAS). The plan stated that the only possible solution was Western Sahara autonomy under Morocco, and with this one can say that the Referendum which was supposed to happen never happened.

The Urgent need for a Referendum: Now coming onto the argument as to why the Sahrawi's need an urgent referendum. There might be several reasons for the occupation of Western Sahara by Morocco but national resources play a cardinal role in Morocco's annexation of Western Sahara

Some important resources being exploited are:

The Phosphate Industry: With an annual production of close to 30 million tonnes of phosphate rock, Morocco is the largest exporter of Phosphate rock in the world and is in no way or form a meage player in this industry. And approximately close to 10 million tonnes originate from the Western Sahara region alone.

In 2008, OCP; A morocco state phosphate company which functions in the border areas of Western Sahara, estimated an all time record, in production, ending up close to 4 million tonnes of which 3 million tonnes were gathered from Western Sahara illegally. In violation of International Law, 16 companies from 12 countries are engaged in importing phosphate produced here. For several years the global phosphate rock prices were around 50 US dollars a tonne, but in 2008 the prices jumped and increased by 800 percent, and from 2008-14 Morocco tripled its earnings from phosphate, and if the same rate of exploitation continues the resources would deplete by zero.

In 2008, Morocco's income from the phosphate-rich area of Suguia-al-Hamra was 1.7 billion US dollars which equals to around 10,000 US dollars per Sahrawi refugee displaced outside Western Sahara but the aid provided to them was only 414,000 US dollars which clearly forwards that the reserves are only being used to fill Morocco's own pockets and not being used for the betterment of the Sahrawi people.

The Oil Market: The oil market is also an area Morocco has been trying to exploit since the early 2000's, the Moroccan government has also intensified petroleum searches in Western Sahara by granting Petroleum exploration licenses to firms like Total, Kerr-Mcgee, and Kosmos Energy.

Many Sahrawi's activists have stated that these exploitations are clearly violating International principles and laws either it be the principle of 'Permanent sovereignty over natural resources' where nation states in the interest of their development and well being of its citizens are given the right to use and dispose off the natural resources in their territories and it has also been established in the General Assembly resolution 1803 (XVII) of 14th December 1962, and it has been reaffirmed in Resolutions 3201(S-IV) and 3281(XXIX) of 1974.

Though its exact scope is still debatable but customary International law comes into play when dealing with the nature of the principles of Permanent sovereignty over natural resources and the right of self-determination. But the Sahrawi stand is that the resources of Non-Self governing territories cannot be exploited and reference of the legal opinion by The United Nations Secretariat is given by them which came to plight in 2002 and stated that 'If exploitation activities were to proceed against the wishes of the people of Western Sahara, they would be in violation of the principles of International law.

The Fisheries Industry: The Fisheries industry which presently quantifies up to 7.6 percent of Morocco's earnings is also an area which is leading to wringing up of scarce Western Sahara resources. It is estimated that close to 80 percent of Morocco's catches are lauded in the harbors of Western Sahara. But not a single penny is used on the Sahrawi people.

Morocco again in violation of International law has fishing agreements with the European Union and states like Japan and Russia. Currently, as of 2017, over 9 dozen companies are present there, hugely violating the International law.

The Monarchy Politics: It has been argued by some authors that a solution to the Sahrawi conflict if not in favour of Morocco would lead to the end of the monarchy. Indeed the question of Western Sahara was manipulated by the monarchy in order to tackle the tension-attention saga which stood for easing the national tension of which the initiators were the pro-democracy groups and swerving away from the public attention from the royal mistakes. Secondly, many Sahrawi civil societies are of the view that a country who can't abide by its constitution can in no way or form be trusted. Article 136 is what they point at, it states that the territorial organization of the kingdom is based on the principles of free administration of cooperation and the will of the people of the territory. It assures the participation of the populations concerned in the management of their affairs and favours their contribution to complete human development.

Others also point out at the role of France, USA, and many European countries as their vested interests have twisted the situation many a time. They are of the view that the dubious attitude of their policymakers to the independence of Western Sahara is strategic.

And in a desperate move to consolidate its illegal authority the government of Morocco entered into various agreements with these countries in defiance of the settled principles of International law, the agreements have lead to the merger of the economies of SADR and Morocco.

This has also led to a growing Moroccan lobby and especially the Security Council powerhouses France and USA support the Moroccan perspective. Starting with France which has been Morocco's strongest ally, and in respect to the Western Sahara conflict, it has supplied Morocco with strong military and diplomatic support. It has also backed Morocco consistently in the UN Security Council including its refusal to all Human rights monitoring in MINURSO mandate.

Secondly, the US which is also a close and old ally of Morocco and in fact, it was the first nation to recognize Independent USA. The United States had in fact named Morocco as a major non-NATO ally in 2004. Recently in 2010 USA went all out to support Morocco when the US Senate sent a letter signed by 58 senators requesting UN to cancel the right to self-determination and endorse regional autonomy.

Increasing Human Rights Violations: The question of the right to self-determination of the people of Western Sahara is paramount to the consideration of the overall human rights situation in the respective territories. It is a human right enshrined in the International Covenant on Civil and Political Rights (ICCPR) & the International Covenant on Economic, Social and Cultural Rights (ICESCR) as stated earlier.

The respect of all human rights of the people of Western Sahara must be seen in tandem with this right and a lack of its realization will inevitably impact the enjoyment of all other rights guaranteed.

Another reason for this urgent need of referendum is the increasing human rights violations. As the Reports of OHCHR (Office of the United Nations High Commissioner for Human Rights) Mission to Western Sahara, 2006 point out, where it was found out that passports of Sahrawi's had been confiscated by Moroccan officials many a time at international airports and thus they were prevented from travelling abroad. Many reports came which also highlighted that websites advocating independence and the right to self-determination were banned and individuals or groups involved in that were taken into custody and out of which many got disappeared by unknown actions taken by the Moroccan police. Another report stated that in 1991 after the ceasefire when several Sahrawi's came out to demonstrate in favour of independence. They all were put behind bars and around 300 got disappeared.

Human Rights Watch also reported that since MINURSO's arrival, 200 more Sahrawi's have been arrested and detained and the arrival of MINURSO in the territory had no effect. The construction of Gdeim Izik (a protest camp formed on the outskirts of the town of El Aaiun by Sahrawi families demanding their socio-economic rights) in October 2010 marked the greatest unrest in the Occupied territories since 1991 ceasefire. It is estimated that close to 20,000 Sahrawi's pitched their tents and lived peacefully at Gdeim Izik for a month, but then it was destroyed by the Moroccan authorities and due to which riots happened and over 150 people got detained and many died in those clashes.

In April 2014, as reported by SIAH (Students and Academics International Assistance Fund) The UN Secretary General Ban Ki-Moon laid forward in his report of 2014 that Morocco was violating human rights and also stated that the international community needs to stand up with the Sahrawi people but nothing constructive happened. Also leaked cables suggested a strong Moroccan lobby within the UN to block human rights monitoring mandate for MINURSO.

Vast Judicial abuses have also taken place, as reported by Human Rights Watch in 2014; A Moroccan court convicted defendants in politically sensitive cases solely on the basis of their confessions, without investigating claims that the police extracted the confessions through torture or ill-treatment.

Similarly, on 4th July 2014, A journalist Mahmoud El Haissan was from his home taken to a secret location by the Moroccan army and was put behind bars for covering violent dispersal of demonstrations by the Moroccan authorities.

Also, some are of the view that during these four decades Morocco has not seen fit to build a single University in Western Sahara leave aside building refugee camps. 300 Refugees have claimed of suffering torture in the quarter of 2017 alone. And such types of incidents are growing on a day to day basis.

Conclusion: Realism attempts to achieve two contradictory aims; on the one hand, Realism attempts to accurately analyse the way things really are 'based on two fundamental concepts of interests and power'. And on the other hand 'Realism is the language of diplomacy'.

In the case of Western Sahara, we can clearly see how realism is an accurate description of International politics, while it is true that both Morocco and SADR proclaim sovereignty over the territory, but both proclamations are not equal. As there are certain initiatives and certain procedures which are not in any way or form adversely affecting either the attainment of certain rights or the allocation of certain resources and in this case it is not the representatives and the masses of Morocco who will decide as to

where the people of Western Sahara belong; It is the Sahrawi people who will decide as to where they belong.

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