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**THE INTERNATIONAL DIMENSION OF THE
CONFLICT OVER THE WESTERN SAHARA
AND ITS REPERCUSSIONS FOR
A MOROCCAN ALTERNATIVE**

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Introduction

At present the issue of the Western Sahara is one of the matters facing the Security Council and the General Assembly of the United Nations, which must decide on the final leg of the currently blocked peace process. Observers agree that continuation of the conflict prolongs the injustice being suffered by the people of this territory, seriously undermines peace and security in the Maghreb and, consequently, has deep repercussions on the relations between the Maghreb and its European neighbours.

Each of these three circumstances is in itself of sufficient weight to prompt determined action of both international bodies and experts on international affairs, be it from an academic or diplomatic standpoint.

In Spain a number of excellent works (1) and studies have been carried out on this problem. They include the long article by Carlos Ruiz Miguel, lecturer at the University of Santiago de Compostela, published by the Elcano Royal Institute in October 2003 (2), and the more recent works of Juan Soroeta (3) and José Ignacio Alguero Cuervo (4). For Spain the issue of the Western Sahara, is not just 'one more hotspot'. As the former colonial power and present member of the Security Council, Spain was at one and the same time in and of the problem in its origin and should, at least, be in on its solution.

Spain's successful transition to democracy conferred it an international status that affords it a significant role in finding a just and lasting solution to the problem of its former colony and the key to the future shape of a region with a wealth of resources, with a stretch of coastline off Cadiz, another opposite Almería and a third not far off the Canaries. The opportunities for a just solution for the former Spanish Sahara now available in the UN, either through the Settlement Plan or the Baker Plan of July 2003, offer a convincing justification –international legality– for playing that role. This is both possible and highly desirable. In this essay, necessarily short given the space available, I will try to show also how a just and final solution to the conflict offers more viable and more attractive solutions for the Moroccan crown than the latter's obsession with the so-called 'Greater Morocco'.

A Pending Decolonisation

An obligatory starting point is to say that the Madrid Agreements of 14 November 1975 were not an honourable settlement by the administrative power ruling the Spanish Sahara. After making an 'impressive presentation of the case' (5) before the International Court of Justice at The Hague in defence of the right of the Saharai people to self-

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determination, one which influenced the sentence of the court (6), only a few weeks later the government reneged on that position in an equally 'impressive *volte-face*'.

The US newspaper, the *New York Times*, in its edition of 31 October 1975, anticipated perfectly clearly that the result of the about-turn would be not only a Spanish withdrawal from the Territory but also the 'carve-up' of the latter between Morocco and Mauritania:

'In Marrakech an official said that negotiations between Morocco, Mauritania and Spain were well along the road to a peaceful division of the colony between the two claimants.'

Diego Aguirre sustains convincingly in his book that the decision to pull out ('Operation Swallow') was taken some time previously, on 15 October in fact, 24 hours before the sentence of The Hague: 'The government's decision, that reached army headquarters in the Canaries, was to pull out before the sentence of The Hague and before the Green March from Morocco got underway...' (7).

The outcome of the Madrid Agreements was an armed conflict and an unspeakable human tragedy for the Saharai people, one that still continues, without providing either Spain or, later, Mauritania with any of the benefits contained in the document they signed. On the contrary, Spanish-Moroccan relations were thenceforward marked by a growing tension which, after the failure to extend the fishing agreements –illegal from the Saharai standpoint– in 1999 and the unceasing arrival of flotillas of boat people, reached a crescendo in the 'Perejil incident' in the summer of 2002, which brought an end to the implicit or underlying geopolitical *modus vivendi* enshrined in those agreements.

Given their nature, content and aims, the agreements clearly violated one of the cardinal principles of the UN Charter: the right of peoples to self-determination. The Organisation of African Unity, in admitting the Saharai Democratic Arab Republic as a member in 1984, denied them any legal or political standing. The UN, in a specific statement on the Western Sahara sent by the Deputy Secretary General for Legal Matters, Mr Corell, to the chairman of the Security Council in a letter dated 29 January 2002, expounded further when it said:

'The Madrid Agreement did not transfer sovereignty over the territory, nor did it confer upon any of the signatories the status of an administering Power –a status which Spain alone could not have unilaterally transferred. The transfer of administrative authority over the Territory in 1975 did not affect the international status of Western Sahara as a Non-Self-Governing Territory.'

The Polisario Front, which had believed in the plans sketched out in the contacts begun in September 1975 with the Spanish Foreign Minister Mr Cortina Mauri, was frankly surprised by what took place in Madrid in November of that year. With invasion imminent, it had no choice but to prepare to resist the new colonisers.

The invasion of Western Sahara in November 1975 caused a mass exodus of the civilian population. The long trek across the desert without sufficient food or water, in the middle of the desert winter, took a tremendous toll on the civilian population, particularly children, pregnant or nursing women, and the aged. Some of these people, sheltering en route behind flimsy canvas in makeshift camps, were the target of Moroccan air force planes which, in February 1976 in the town of Umdreiga, employed internationally outlawed napalm and fragmentation bombs against them.

The analysis of the situation carried out then, corroborated by the hindsight that comes with the passage of time, tells us that the tragic events that took place in the Western Sahara at the end of 1975 were the result of various factors. In the first place, there was

the domestic situation in Morocco. King Hassan II saw his throne under threat from a prolonged domestic crisis that prompted the army to stage two attempted coups in 1971 and 1972. Pressing his country's alleged territorial claim to the Western Sahara by force was a means of distracting domestic attention. The case was similar to that of the Argentine military junta in the Falkland Islands affair, or of the Iraqi invasion of Kuwait, which 'would have been illegal even if Iraq's claims had been well founded' (8).

In the second place, overrunning the Western Sahara could not take place without the acquiescence of the colonial power. From the first signs of tension Spain was only too ready to pull out, reneging on its obligations as the administering power. Thirdly, the international situation, dominated by the stalemate of the Cold War, meant that the two Western powers with influence both in that stalemate and in North African affairs, the United States and France, gave their blessing not only to the annexation of the Western Sahara but also to the underlying strategy behind the Green March. Their medium-term target was Algeria; their short-term objective was to prevent the independence of the Western Sahara. On this basis the Saharai State, before it had even been born, was written off as a Soviet satellite, either in its own right or through the influence of Algeria, when the USSR had not even had contact or allowed the Polisario Front to open a simple diplomatic office in Moscow. The same can be said of China.

Events on the Ground

This is not the place for a lengthy account of the military aspect of the conflict of the Western Sahara. Suffice it to say that it was the first time in colonial history that an anti-colonial war was fought without the aid of a major power and over flat desert. Saharai military experience has good claim to be considered the leading doctrine on the art of prolonged war in a desert environment.

In June 1976 the Saharai military command, under the brilliant leadership of El Uali, was ready to respond to the *fait accompli*. The attack on the Mauritanian capital on 8–9 June and on the Moroccan stronghold of Tantan in June 1979, followed by the fall in October of the armoured vehicle base of Leboitrat, were the great battles which began the Saharai counter-offensive on the southern and northern fronts.

Mauritania, after three years of war, came to the conclusion that the conflict was undermining the very existence of the country. The reinforcements sent by Morocco and the direct involvement of the French Air Force –the famous *Jaguars* exhibited in the first Gulf War– from its bases in Dakar, had no significant impact on either the war or what Mauritians thought of it. On 10 July 1978, the army overthrew President Uld Daddah. After some months' hesitation, the new rulers signed on 5 August 1979 a peace agreement with the Polisario Front by which they agreed to put, 'an end to all territorial claims either now or in the future over the Western Sahara' and to their participation in an 'unjust and fratricidal war'. In 1984 Mauritania formally recognised the Saharai Arab Democratic Republic (SADR).

In response to the peace agreement of 5 August, in September 1979 Morocco occupied the terrain evacuated by Mauritania, in breach of the share-out of territory agreed in April 1976. It caused Morocco more headaches: militarily, by requiring heavier fighting over a larger area, and diplomatically, by losing it considerable face in Africa and by recalling the attention of the United Nations. That year the UN General Assembly 'vigorously' condemned, 'Moroccan military occupation of the area evacuated by Mauritania' (see resolutions 3437/1979 and 3518/1980).

At the beginning of the 1980s, fighting against Moroccan troops, with prolonged battles both in the Western Sahara (Guelta, Bir Enzaran, Mahbes and Tifariti) and in Morocco

itself (Tantan, Lemseyid, Ras el Janfra, Leboirat and Zak), reached its height. After the short-lived success of a counter-offensive (Operation Imam) commanded by General Dlimi at the head of three mechanised divisions (Zalaka, Uhuud and Badr), Morocco reached the conclusion that a military victory was out of its reach. It thus proceeded, in stages, to construct a 1,200-kilometre sand-and-stone embankment or 'berm', from two to three metres high, protected by barbed-wire entanglements, 25 million landmines and a sophisticated electronic surveillance system capable of protecting its force of between 120,000 and 180,000 troops, exhausted by a campaign the length and severity of which had seriously surprised the Moroccan government.

Morocco's defensive strategy took the Saharai military commanders, in turn, by surprise. The intensity of the fighting steadily declined over the period 1986–88. The minefields wrought havoc. One of the initial tactics of the Saharai was to employ heavy artillery bombardment of enemy emplacements. The damage caused was negligible. But after a pause to study in detail the key elements of Morocco's new defensive strategy, particularly the radar system installed along the entire length of the protective embankments and walls, they came to the conclusion that the barrier could be pierced in certain weak points.

The UN Takes a Fresh Initiative

At the same time, the mediating efforts of the United Nations, impelled into action by the General Assembly's resolution 4050 of December 1985, began in 1986 to hold indirect negotiations or 'proximity talks'. The insistence on face-to-face talks, contained in 4050 of the UN and 104 (XIX) of the OAU (Organisation of African Unity), had been flatly turned down by Morocco. On 30 August 1988, the UN Secretary General, Javier Pérez de Cuellar, succeeded in obtaining progress in the form of an 'acceptance in principle' by both sides of a peace plan leading to a referendum to be held in the Western Sahara on self-determination.

In the first week of January 1989, on the eve of the creation of the Arab Maghreb Union (AMU) the Moroccan monarch, Hassan II, held his first meeting with a high-ranking Saharai delegation in Marrakech: a major diplomatic advance... leading nowhere. At the king's request, the Polisario Front declared a unilateral truce in the field as a gesture of goodwill for continued dialogue, the next meeting being scheduled for 4 February 1989. In reality Hassan had no intention of following up on the initial encounter. He had said as much to various European governments, including Spain's, as can be deduced from the meeting on 2 February between Bchir Mustafa Sayed and the Spanish minister Francisco Fernández Ordóñez. There were, nevertheless, various efforts to get the two sides together between February and September 1989, though each time Morocco sidestepped the engagement. This game lasted until October 1989, when the Saharai forces penetrated the Moroccan defences over a 50-kilometre front, near the town of Um Dreiga, after which the situation created by the defensive walls and radar emplacements was effectively ended.

Despite its military successes, the Saharai leaders knew full well that the solution to the conflict would not be a military one. Historically, military victories had always been the result of alliances against one or two armies. Their conclusions were that in the field the two sides had reached a strategic stalemate. Technically, this was probably true, but long-term it would lead to a gradual imbalance unfavourable to Morocco which, along with the social and economic demands of a population of nearly 30 million, would have to attend to the enormous logistic and supply requirements of an army in fixed positions over a huge area of torrid desert, on top of having to fund a costly diplomatic retreat at the OAU and subsidise the civilians who crossed into the Western Sahara in the 'Green March'. Two

per cent of the wages of each Moroccan civil servant today go straight back into the State coffers to pay for the Western Sahara subsidy.

The UN–OAU Settlement Plan of 1990–91

The possibility of a political solution began to take shape at the end of the 1980s and beginning of the 1990s, when the world political situation underwent a major shift.

The changes in the international panorama after the first phase of the end of the Cold War –the fall of the Berlin Wall in 1989– gave the UN a second chance to emerge from its long repose and mediate in regional conflicts, particularly in those, such as the Western Sahara and Namibia, deriving from decolonisation, the primary subject matter of the principle of self-determination enshrined in the UN charter.

As stated earlier, in December 1985 the General Assembly of the United Nations adopted resolution 40/50 which incorporated one of the provisions of the OAU resolution 104 (XIX) voted on at the Addis Ababa summit of 1983, which called on both parties to initiate by December of that year (a) direct negotiations aimed at achieving (b) a ceasefire and (c) agreement on the terms of a referendum on self-determination for the Saharai people. Morocco had opposed application of this resolution, a stance which precipitated the admission to the OAU one year later of the SADR as a member State. Once the OAU resolution was converted into resolution 40/50 of the United Nations, Morocco saw that the game was up and abandoned further diplomatic struggle.

Resolution 40/50 meant that both organisations, the UN and the OAU, were able to set up a top-level joint task force which eventually produced the 'Joint Settlement Proposals' that in August 1988 received the 'acceptance in principle' of both sides. At the beginning of January 1989, as mentioned, there was a meeting in Marrakech, without immediate issue. The Secretary General, who was, as he recounts in his autobiography, *Pilgrimage for Peace*, very interested in resolving the problems of El Salvador and the Western Sahara before his term of office expired in 1991, intervened by presenting the Security Council in June 1990 with a detailed 'Settlement Plan' (S/21360/1990) to apply the agreed proposals. The plan was fully accepted by Morocco and the Polisario Front and was given the final blessing of the Security Council in its resolutions 658 (690) and 690 (1991). The first Gulf War delayed implementation until April 1991 when the Security Council authorised despatch to the Western Sahara of a United Nations Mission for the Referendum in Western Sahara (MINURSO in its French initials).

The first peace process subsequent to the Moroccan invasion of 1975 got underway on 6 September 1991 with: (a) partial deployment in the Western Sahara of MINURSO civilian and military personnel made up of nationals of more than 50 countries and, for the first time, of the five permanent members of the Security Council; (b) enforcement, that same day, of a ceasefire; and (c) the beginning of the process of identifying potential referendum voters from the last census carried out in the territory by the Spanish authorities in 1974. The Secretary General and the Security Council established the date of the referendum for the Saharai people at no later than February 1992.

Moroccan Obstruction

The planned deadline could not be met. Morocco interposed its desire for a substantial revision of the clause covering the voters in the referendum which, in paragraph 61 (S/211360) of the Settlement Plan were all Saharais, 'whose names appear on the last population census carried out by Spain in 1974', some 75,000 people.

The pressure brought to bear by Morocco succeeded in obtaining from Pérez de Cuellar, shortly before he stepped down, the concession of unilaterally introducing new rules for identifying voters, different from those of the Spanish 1974 census, contained in report S/23299 of 19 December 1991. As the Spanish newspaper *El País* observed in its edition of 7 January 1992, 'it is hard to see what prompted Pérez de Cuellar to abandon the UN's previous position'. All this coincided with the collapse of the Soviet Union and its replacement by the Russian Federation in the UN Security Council.

Due to the changes, the Security Council was unable to approve or reject the changed criteria. Instead, in resolution 725 (1991) of 31 December, it passed this hot potato on to the new Secretary General, Boutros Boutros-Ghali, who assumed office the next day, 1 January 1992. The dispute rumbled on, however; it proved to be the first body blow to the Settlement Plan.

At the end of February 1993, the international press raised its collective eyebrows at the appointment of Javier Pérez de Cuellar as a board member of the Moroccan holding company ONA. Many, including the Saharais, saw in this the answer to the question asked in *El País*. In an interview with the journalist Isabel San Sebastián published on 7 March 1993 in the Spanish daily *ABC*, Pérez de Cuellar denied the charge: 'I am being used as the scapegoat of the Polisario Front,' he said. 'It's unfair.' *El País*, on 4 February 1993, wrote that 'ONA sources in Casablanca expressed surprise at Pérez de Cuellar's denial.'

In fact, the Polisario Front had nothing to do with the news. The appointment of the former Secretary General as an executive of ONA had originally been published, intentionally or otherwise, by the Moroccan official news agency, MAP, in a dispatch dated 29 January 1993 (9).

The Period in Office of Boutros-Ghali

Boutros-Ghali's time as Secretary General of the UN, between 1992 and 1997, allowed Morocco to consolidate the unilateral modification of the Settlement Plan introduced by his predecessor. In his relations with the Polisario Front, Boutros-Ghali did not hide his longstanding pro-Moroccan stance which, years earlier, as Egyptian Foreign Minister, had underlain his harsh exchange with the Saharai minister Omar Mansur at a meeting of foreign ministers of the OAU.

A few weeks after taking office, on 26 February 1992 in a meeting in New York with President Mohammed Abdelaziz, Boutros-Ghali was beside himself when Abdelaziz refused to accept the former US general Vernon Walters as special representative for the Western Sahara, given the almost paternal relations which linked the American veteran with the Moroccan royal family. 'Out of 300 million Americans, you can do no better than Vernon Walters?' said Abdelaziz.

His irritation rose to new heights when the alternative candidate, the former Pakistan Foreign Minister, Yacoub Sahebzada Khan, was also rejected by the Polisario Front, for the same reasons. Despite the protest, and as evidence of the tense relations, the Pakistani was imposed on the Polisario Front.

In the course of a meeting in Geneva in June 1992, Yacoub Khan requested a five-minute tête-a-tête with the head of the Saharai delegation, Bachir Musta Sayed. 'King Hassan has told me to tell you that if you have any personal needs, to let me know.' This more or less indecent proposal was later repeated by Yacoub Khan on a more momentous occasion.

In March 1994, the Polisario Front lost confidence in the UN representative, telling him so in a letter which was also sent to the members of the Security Council. Kahn was later removed from the scene, probably on the advice of influential members of the Security Council.

During the Boutrous-Ghali period, however, MINURSO was able to initiate, in August 1994, the first phase of identifying the voters in the referendum, thanks to the efforts and tenacity of the chairman of the Identification Committee, Mr Jensen. However, the process was paralysed shortly afterwards by Morocco's insistence on including the people belonging to the so-called disputed tribes.

A few months before standing down as Secretary General, Boutrous-Ghali, in his report of May 1996, warned the Security Council of an imminent return to hostilities in the Western Sahara as a consequence of the 'visible warlike preparations of the two sides'.

The Kofi Annan–James Baker Period

The election in December 1996 of a new Secretary General of the United Nations in the person of Kofi Annan, who chose as his personal envoy for the Western Sahara the former US Secretary of State, James Baker III, gave new life to the settlement process. The political standing of the mediator and his wide experience, once brought to bear on the task entrusted to him by the UN, allowed the start of direct negotiations at a high level between the Polisario Front and Morocco, which culminated in the Houston Agreements of 16 September 1997.

These agreements were of major importance, as was underlined by Kofi Annan in his report to the Security Council (S/1997/742) of November 1997: 'With these agreements and the spirit of goodwill and cooperation demonstrated in the prior conversations, the main points at issue that had prevented application of the Settlement Plan have been satisfactorily resolved... These achievements create the conditions to move forward to the full application of the Settlement Plan, beginning with the recommencement of the process of identification' (paragraphs 26 and 27).

After Houston, MINURSO was able to restart in December of the same year and complete by January 2000 the process of identifying voters. Of the almost 200,000 applications to participate in the referendum, most of them filled out by the Moroccan government, the UN eventually decided that 86,000 were genuine Saharais entitled to take part. This figure was close to what could be conceived of as a reasonable update of the last Spanish census of 1974.

In February 2000, MINURSO issued the list of 86,000 people and thereby opened the period in which those omitted could exercise their right of appeal if they considered that they had 'convincing additional proof' not previously submitted. To appeal is a right inherent in all legal systems provided it is employed in good faith. However, the bulk of the identification work had been completed successfully. It allowed the end of 2000 to be set as the date for the referendum in the schedule revised by Annan as a result of the Houston agreements.

Moroccan Obstruction and Breach

Once again Morocco obstructed the process by lodging, in the name of its settlers, 130,000 appeals against the list of voters issued by the UN. The number was excessive. The Security Council had warned both parties in resolutions 1238 and 1263 of May and September 1999 of the temptation of abusing the right of appeal.

Although it was a serious technical obstacle, the UN managed to complete the work without undue difficulty thanks to the staff the Identification Committee drafted in to speed up the processing of the unexpectedly high number of appeals.

Progress, at this stage, required great political will. However, that willpower rapidly withered and the United Nations began to wheel around, as first became noticeable in the report of the Secretary General (S/1999/1219) of 6 December 1999. This volte-face would, in time, carry the UN way off its original determination to press ahead with the settlement plan and consequent decolonisation. The cause lay somewhere in the murky side of the bureaucracy that runs the United Nations.

With hindsight the causes of this change of heart, which would lead, a year later, in May 2001, to the 'Framework Agreement', can be revealed with a fair degree of clarity. The information in our possession indicates that, following the death of Moroccan King Hassan II on 25 July 1999, the French foreign service warned Baker and Annan, together with Madrid and Washington, of the risk of 'destabilising' –the old argument– the new king Mohammed VI, should the Western Sahara be decolonised.

France, in the twenty-first century, still clung to its old view. President Chirac went even further in the course of his visit to Morocco in December 2001 during which he referred to the Western Sahara as Morocco's 'southern provinces'. His most recent visit to Morocco, on 9 October 2003, demonstrated once again Chirac's total compliance with Morocco's plan to annex the Western Sahara, despite resolution 1495 of 31 July 2003 in which the Security Council, with France's vote, pledged full support for the latest version of the Baker peace plan. France's approach on the Western Sahara does not match its attitude towards Iraq.

The lack of a firm response by the UN to Moroccan obstruction tactics with false appeals may be explained by the fact that Baker, faced with this obstacle, may have been trying the approach suggested by France and Morocco, ie, exploring what was ironically dubbed the 'third way'.

Sure enough, after the hiatus caused by the appeals, in February 2000 Baker summoned the parties involved to two meetings in London, held in May and June of that year. The delegations of Algeria and Mauritania also attended. The Moroccan delegation comprised the new foreign minister, Mohammed Benaissa, and the new, loquacious and aggressive interior minister, Ahmed Midaoui.

The part taken by Baker in these meetings was different from the one he had played in the negotiations leading to the Houston Agreements. The problem posed by the Moroccan appeals was perfectly soluble on the basis of the detailed agreements between the two parties and the UN, represented by the brilliant deputy Secretary General, the Frenchman Bernard Miyet, in May 1999, precisely in anticipation of such appeals. But Baker was in no frame of mind to pressurise Morocco into abiding by those agreements.

On 29-30 September we all met again in Berlin, where it was quite clear to the Saharai delegation that we were on the eve of a 180-degree turnaround by the United Nations. Later, Baker and Annan admitted that the underlying reason for their conduct was not the appeals but the fact that 'Morocco has expressed unwillingness to go forward with the settlement plan...' (paragraph 48 of report S/2002/178 of 19 February 2002).

In the course of the meeting held in the German capital, Morocco declared openly that it considered the settlement plan impossible to implement and was thus only prepared to countenance, by means of a 'frank discussion with the other party', a solution that previously accepted its sovereignty over the Western Sahara. The head of the Saharai

delegation, Mahfud Ali Beiba, rejected this 'offer' on the spot, insisting that all face-to-face encounters must take place within the context of the Settlement Plan, established to arrange for a referendum on self-determination. The stage was thus set for the appearance of the 'third way', the Framework Agreement, the details of which are contained in the report of the Secretary General to the Security Council S/2001/601 of 20 June 2001.

The draft Framework Agreement made the following basic proposals.

(a) A five-year transition period (instead of the six months of the Settlement Plan) in which the Territory should remain under Moroccan sovereignty while different electorates, including the population of Moroccan settlers, choose a Legislative Council and an Executive Council with local administrative powers.

(b) At the end of this period a referendum to decide the future of the Territory. 'To be qualified to vote in such a referendum a voter must have been a full-time resident of Western Sahara for the preceding year', (paragraph 5 of the proposed framework agreement). This provision, the key to the whole project, opened the door for creating an electorate comprising a majority of Moroccan subjects who would thus be allowed to determine the future of a Territory which was not theirs.

An Unviable Project

As the Polisario Front had set out in detail in a memorandum at the beginning of July 2002 to the Security Council (S/2002/749), the main arguments used by the Secretary General from December 1999 to May 2001 were three.

(1) The first argument was that to process the 130,000 appeals lodged by Morocco in February 2000 would require at least two years, which would push the referendum back two years, to 2002.

However, the Framework Agreement proposed a referendum that was not only of dubious legality but would be held no earlier than five years thence. To show 'impatience' with two years and 'indulgence' with five years was incoherent, to say the least. At the same time, had the Security Council given instructions to MINURSO to start processing the appeals in February 2000 the operation might have been over in a year and the referendum on self-determination held even before the end of 2002.

(2) The second argument was that the absence of a provision in the Settlement Plan of coercive measures to enforce the results of the vote would have allowed the losing side to ignore the results of the referendum. This circumstance argued in favour of abandoning the Settlement Plan.

Yet, thanks to its Charter, the Security Council has full powers to meet such an eventuality and ensure implementation of a referendum held under its auspices, including resort to Chapter VII of the Charter, given that failure to respect the results of a referendum would generate a situation of violence leading to a 'potential threat to international peace and security'.

(3) The third argument said that the referendum envisaged in the Settlement Plan has the disadvantage of being a 'winner takes all' solution.

This argument shifts the focus to the two parties and their respective potential gains, when it should remain where it was supposed to be from the outset, on the interests of the Saharai people. The parties, Morocco and the Polisario Front, voluntarily accepted the

Settlement Plan and, with it, the referendum which clearly marks out two alternative solutions: the independence of the Territory or its integration within Morocco. In all credible democratic elections there has to be a victor. This is not a disadvantage but an elementary condition of democracy.

The one-sidedness of the argument emerges even more clearly when we see that the Framework Agreement allows Morocco, the occupying power, *to take all* at the end of five years after a referendum of doubtful legality.

The Security Council and the Proposed Framework Agreement

The Polisario Front, one of the directly implicated parties, and Algeria, a party with observer status, rejected the proposed Framework Agreement the same day, 5 May 2001, on which Baker proposed it. The Polisario Front decided not to reveal its opposition publicly, thinking that this would allow Annan and Baker an opportunity to rethink their position and, perhaps, abandon the idea. We were wrong. On 20 June they presented the proposal to the Security Council in report S/2001/613 as being the 'last chance' to solve the conflict.

On consideration of the Secretary General's report containing the proposed Framework Agreement, the 'Group of Friends', ie, Russia, the United States, France and the United Kingdom, plus Spain, as the group normally responsible for drafting resolutions on Western Sahara, split. Russia and Spain rejected the proposal, whereas the other three revealed a keen interest in making the formula work.

Resolution 1359 (2001)

After intense negotiations between the group members and the parties concerned, the Security Council adopted resolution 1359/2001 of 29 June 2001 which approved neither the proposal nor the Secretary General's report which it said, in its usual tactful way, had been 'examined'. All the Council said was that the parties, 'should discuss the proposal and negotiate whatever modifications they consider necessary to make it acceptable along with any other proposal of the parties aimed at reaching a mutually acceptable solution.' The Council also expressed its agreement to 'the proposals of the Polisario Front to reinitiate application of the Settlement Plan'.

On 31 August 2001 Baker summoned the parties –except Morocco– to the small town of Pinesdale, WY, where he had a ranch, with the idea of further discussion of the proposed Framework Agreement.

Morocco did not attend the meeting. An interview given by Mohammed VI to the French newspaper *Le Figaro* a few days later, on 4 September, partly revealed the reason for the absence of the Moroccan delegation, when he said, 'I have solved the Sahara problem, after confidential talks lasting eight months...'. The time that had elapsed between Berlin and the presentation to the Polisario Front of the proposed Framework Agreement in May 2001 was precisely eight months and five days.

The talks in Wyoming had lasted two days. Baker had given us the impression that he had understood that the formula was unlikely to make much progress. However, the setback caused to the original peace process was considerable and its effects are still visible in the way the UN allowed Morocco not only to emerge unscathed from its opposition to the settlement plan in 1990-91 but to blithely oppose any solution which did not concede a priori Moroccan territorial rights over the Western Sahara.

A few days later, the terrible tragedy of 9/11 took place and, with it, a new international order in which the fight against international terrorism became the chief concern of all parties.

The Four Options

After Wyoming, Baker tried a new approach, by returning the ball to the court of the Security Council. On 19 February 2002, the Secretary General of the UN presented his report on the Western Sahara to the Council. After summarising the substance of the negotiations of the preceding ten years, the report recommended the Council to choose between the *four options* presented by Baker, in this order: (a) implementation of the settlement plan; (b) proposed Framework Plan, containing possible revisions; (c) partition of the Territory on the basis of the Mauritanian-Moroccan agreement of 1976; and (d) admit the failure of the UN to resolve the problem by withdrawing MINURSO from the Western Sahara.

Resolution 1406 (2002)

Morocco rejected all solutions except the second, the so-called Framework Agreement. The Polisario Front noted that the Settlement Plan was the only formula accepted by all parties and by the Security Council. It said the second option was totally unviable. At the same time, it pointed out that it would continue to cooperate with the efforts of the Secretary General and his personal envoy, showing prudence and flexibility, with respect to the third option in the hope of see what specific suggestions James Baker could come up with, if the Council was prepared to give him a mandate with this in mind.

The Council met in April of 2001. On the 26th, against all the odds, the US delegation, with the support of the United Kingdom and France, but without either Spain or Russia, members of the Group of Friends, circulated a proposed resolution based on the option preferred by Morocco. It failed to obtain the minimum eight votes. The chair, held by Russia, was against the motion as were the majority of the delegates, including Mexico, Ireland, Norway, Singapore, China and Mauritius, and presented an alternative motion which became technical resolution 1406 (2002) of 30 April 2002, deferring the debate until July 2002.

Resolution 1429 (2002)

Between April and June, Morocco launched one of its biggest diplomatic offensives on the capitals of the member countries of the Security Council in preparation for the crucial July vote, when it hoped the Council would 'accept' the polemical proposed Framework Agreement. It was in that period that the 'Perejil Incident' occurred. The chairman of the Security Council, the British ambassador Jeremy Greenstock, seeing that the Moroccan proposal, despite the visible support of three countries (the United States, France and the United Kingdom), would not obtain majority support, worked with the parties and with Baker to reach an alternative resolution, 1429 of 30 July 2002. The Council decided to ask Baker to 'continue with his efforts to find a political solution to this long-standing dispute,' stressing that the Council was 'ready to consider any approach which provides for the self-determination of the people of the Western Sahara'. Baker, after Wyoming, had gone back to the Security Council; the Security Council had handed the package back to Baker.

Baker Plan II. Resolution 1495 (2003)

Baker, after withdrawing for a while, returned to the region again in 2003 with a 'new' formula, the so-called 'Peace Plan for the Self-determination of the People of the Western Sahara'. It was, according to him, a synthesis of the elements of the Settlement Plan and

the proposed Framework Agreement. Indicative of his perseverance, but weariness also, he presented it to the parties as a non-negotiable whole: take it or leave it.

In the first week of March 2003, the Polisario Front informed Baker of its implicit opposition to the Plan, in that it was a means by which the UN could once again annul the Settlement Plan, the only formula, he was reminded, already accepted by the two parties and the Security Council. The formula consisted in MINURSO starting to process all the appeals lodged by Morocco, using procedural conditions established solely by the UN. The proposal had the merit of recommencing the existing peace plan rather than starting a new one. Morocco communicated to Baker its total opposition to the plan, while trying to persuade him to return to the polemical Framework Agreement which, as we saw, was approved neither by the Security Council nor by the opposing party.

In July 2003 the Council met to consider the Peace Plan in the light of the response of the two sides. On 7 July the Polisario Front, in a move which surprised even Morocco, told Baker in writing and subsequently the then chairman, Spanish ambassador Inocencio Arias, verbally, of its readiness to explore the Baker proposal with a view to implementation. Many observers asked what had caused this change of position. For some time Algeria, and various governments of countries with which the Polisario had close ties, among them, Spain, Mexico and South Africa, had been advising of the need for us to revise our original position. According to the contacts of the Saharai delegation in New York, we were aware that the change was received positively by the majority of the Security Council, with the exception of France, concerned for the situation Morocco was now left in. Kofi Annan, in a letter dated 28 July 2003 and addressed to the Secretary General of the Polisario Front, said he was 'highly satisfied at the acceptance by the Polisario Front of the Peace Plan for the Self-determination of the People of the Western Sahara'.

Now it was the turn of the American delegation which, in spite of Morocco, presented a resolution aimed at obtaining the 'approval' by the Council of the Plan. After more than two weeks of intense negotiations and contacts at the highest level, the Council adopted resolution 1495 of 30 July 2003, by means of which the Security Council granted its 'strong support' for the Plan, extended the MINURSO mandate until 31 October 2003 and invited the parties (in reality, Morocco) to 'accept and implement' it.

The Security Council, in response to the concerns of most of its members and in order to 'calm' the situation in Morocco, added to the preamble to the resolution that it was acting within the framework of Chapter VI of the UN Charter, by which it meant that the Plan would not be imposed by force on Morocco. Morocco considered this reference a success. In actual fact, the Security Council had been acting throughout under the terms of Chapter VI, as far back as 1990. But this did not mean that the resolution was worthless. Even within the limits of Chapter VI, its wording applies enormous diplomatic pressure that cannot readily be ignored.

Following the adoption of resolution 1495, the mandate of MINURSO was extended to the end of October 2003. At the end of September 2003, Baker received a Moroccan delegation in Houston to discuss progress. According to the information at our command, the Moroccans offered a number of ideas about the transition period on the understanding that independence would not be an option in any future referendum. Baker said no.

The arguments of the US mediator against the Moroccan standpoint had already been put in writing in his report of May 2003 (S/2003/565). In paragraph 51 of that report it says 'The main objection of Morocco to the peace plan seems to be that in the referendum to determine the final status of Western Sahara, one of the ballot choices is independence. However, independence is also one of the two ballot choices under the Settlement Plan

(of 1990-91), which Morocco had accepted'. The following paragraph tosses another stiff dose of rationality into the argument by adding, 'It is difficult to envision a political solution that, as required by Security Council resolution 1429 (2002), provides for self-determination but that nevertheless precludes the possibility of independence as one of several ballot questions'.

Faced by these arguments, the Moroccan delegation asked for more time to draw up its definitive response to the Plan. Baker agreed to an extension of MINURSO until the end of January 2004, not without first calling on the Moroccan government, via the report delivered by the Secretary General (S/2003/1016), for maximum cooperation. Thus, in Paragraph 27, he says, 'The peace plan represents a fair and balanced approach to the question of Western Sahara (...) The acceptance of the peace plan by the Polisario Front now offers a window of opportunity for solving the long-standing dispute. I urge Morocco to seize the opportunity and positively engage in the process by accepting and implementing the plan'. In paragraph 28 he ends, 'It is my sincere hope that by that time the Kingdom of Morocco will be in a position to engage positively in implementing the plan. If not, I will revert to the Security Council in January with my view on the future of the peace process in Western Sahara, as well as on the mandate of MINURSO'. Many observers interpret this sentence as a 'diplomatic ultimatum'. In January 2004 there had been no positive response from Morocco. The Council extended the mandate of MINURSO to the end of April.

The Saharai authorities, who had accepted the Baker Plan to facilitate the possibility of resolving the conflict, continued to watch with growing concern the stalemate resulting from Morocco's persistence in its time-worn delaying tactic.

A Saharai delegation led by its Secretary General, Mohammed Abdelaziz, reached New York, where it was received by Kofi Annan on 24 March 2004. After a trip to Washington, where he held meetings with various US congressmen and senators, Mohammed Abdelaziz and his delegation arrived in Houston where, on 30 March, they held a long meeting with Baker.

At that meeting, the former US Secretary of State said that he lacked information on the definitive position of Morocco and that he was expecting to have a meeting with a Moroccan delegation on 2 April. Whether that meeting will bring a response or not we do not know at the time of writing this report.

Although prudence is the best policy, there are two possible scenarios. The first is that Morocco continues with the tactical game it has used so far and Baker and the Secretary General, for some, maybe even relevant, reasons, allow them to do so. This would imply firmness by both of them in defending the Plan but it would also permit a further technical extension of the mandate of MINURSO in the hope of 'miracles' or 'pressure' in the meantime. The second is that Baker and Kofi Annan accept the Moroccan conditions, eliminating independence from the self-determination referendum as an option. If so, it would be a serious setback for the credibility of all that has taken place to date. Such an outcome, which the majority of the Security Council, with the possible exception of France, would find difficult to swallow, would lead to another outright rejection of the Polisario Front and, possibly, a fresh division in the Security Council.

The Options for Morocco

A re-read of the foregoing account shows that the possibility of a definitive solution for the question of Western Sahara appears and disappears in cyclical phases caused by a series of factors, the most visible of which is Morocco's determined opposition to all proposals put to it since 1975, from the Waldheim Plan of November 1975, through the

Settlement Plan, with its possibility of a credible territorial agreement, to the recent Baker Plan II.

With a domestic situation rife with serious and growing problems, one of which struck Madrid tragically on 11 March of this year, Morocco runs the risk of bringing upon itself the kind of situation Indonesia has got itself into, by obstructing a fair solution to a colonial conflict. Sincerely, we do not wish for such a scenario. I think, equally sincerely, that there are more reasonable, attractive and viable routes for Morocco, though, as we know, no one should give lessons to others. For this to occur our Moroccan friends must step back and take stock of the situation which has driven them to this fixation on territorial grandeur. On this score, one of two obvious facts should be mentioned.

In the first place, for the international community the case of Western Sahara is one of decolonisation which should be settled in accordance with the principle of self-determination enshrined in the UN Charter. The solutions that lay outside this principle have never reached anywhere but great loss of life and resources which have weakened the Saharai and the Moroccan peoples. Without legality there can be no legitimacy.

Secondly, the official Moroccan line, repeated constantly, goes as follows.

(a) The Saharais have expressed their 'Moroccan-ness' in various 'local elections' and are happy with their lot. If this is the case, it is hard to see how Morocco can oppose Saharais expressing such 'happiness' in a UN-sponsored referendum on self-determination.

(b) The conflict is an 'artificial' conflict fabricated by Algeria which, via Saharai independence, seeks access to the Atlantic. Algeria has supported all peoples in their struggle for self-determination. As far as access to the Atlantic is concerned, this would make sense if we were in a case such as Bolivia. It would also be a credible argument if Algeria saw in Senegal a strategic commercial target vital for its survival. Algeria has a coastline hundreds of kilometres long on the Mediterranean, across which all its international trade flows, including gas and oil, from which many countries, including Morocco, benefit.

(c) If Western Sahara is 'lost', the throne would be destabilised. Nobody 'loses' what he does not own. That said, playing with fire and then spilling petrol is not a sound security policy. Since 1975 Morocco has been responsible for the tension, disorder and rearmament in the region, and has no greater degree of security either inside or outside the country to show for it.

In the third place, the situation has changed. The assault on Western Sahara was possible in an international context defined by the Cold War. That period is happily behind us. New standards rule the world, one of which is the need to vouchsafe the credibility and capacity of the United Nations, even on an issue such as decolonisation.

To make no bones about it, globalisation in terms of both economics and regional security will not allow the configuration of a Maghreb region based on the vision of a single State riding roughshod over international law and the views of all its key neighbours. So, for example, to ignore, as Morocco has a mind to, the views of Algeria on Western Sahara and the region at a time when the United States considers Algeria (10) in a position to play a 'leadership role in the twenty-first century' is impractical. In the same way, given the depth and the breadth of its commercial relations with Europe in energy and security, and bearing in mind its progress towards democracy, Algeria cannot be ignored at Morocco's whim on matters which Algeria considers essential for its own and the region's geostrategic good. Equally, no one should forget Mauritania, an important player in the regional geopolitical balance.

The new world situation and the international legal imperative should give the powers that yesterday backed the Moroccan military initiative in Western Sahara a new role in establishing peace in the region. I do not see that such a role, judging from the statements of Richard Armitage, is impossible for the United States. In principle, this world power has a vested interest in the success of Mr Baker's mission. Nor should such a role be impossible for Spain, beyond the question marks raised by the recent sweeping statements of its new foreign minister, Miguel Ángel Moratinos, to the French newspaper *Le Figaro* (11). I see that the essential difficulty lies with France, clinging to its old ties with Morocco. There is, however, a well-known Gallic capacity for imagination, one that the 'complicity' referred to by Mr Moratinos may possibly arouse. Such a re-examination, combined with a similar critical and sincere review by our Moroccan friends of what they have achieved to date, would greatly facilitate an alternative to the Moroccan option. Permanent conflict and unseaworthy boats fall some way short of the future Moroccans deserve.

Conclusions

The main outlines of a viable alternative would look something like this:

- Initiate a credible internal democratisation process tied to a constitutional reform as thoroughgoing as is humanly possible, to allow Moroccan democratic and political forces to have their own say in the successful management of the complicated economic and social situation they have inherited.
- The neighbouring countries of the Maghreb, including the SADR, would be prepared to put their shoulder (and their immense resources) to the wheel to make such a process a success.
- A Maghreb thus configured, with an internal market of close on 80 million consumers and open to external trade, could find real answers to chronic underdevelopment and serve as the driving force of a unification process. This was how the European Union emerged after two long periods of conflict, on the basis of democracy and faith, not on extending borders by force of arms.

The catalyst for such a process would be a definitive Moroccan reconciliation, free of the old hang-ups, with its neighbours, permitting first and foremost the culmination of the UN-led peace process. The determined support of Spain, the European power most interested in the decolonisation of Western Sahara, and of the EU and the US, together with Russia and other interested parties, for a development on such a scale and with such humane goals, would make it possible for Morocco to stride firmly towards new horizons, towards a very different future from its fixation on the past.

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Notes:

- (1) The works of Francisco Villar, *El proceso de autodeterminación del Sahara*, Editorial Fernando Torres, Valencia, 1982, and of José Ramón Diego Aguirre, *Historia del Sahara Español. La verdad de una traición*, Kaydeda Ediciones, Madrid, 1988, are essential reading to understand the decolonisation process of Western Sahara.
- (2). Carlos Ruiz Miguel, *El largo camino jurídico y político hacia el Plan Baker II. ¿Estación de termino?*, DT/WP, Elcano Royal Institute, 13/X/2003.
- (3) Juan Soroeta Licerias, *El conflicto del Sahara Occidental, reflejo de las contradicciones y carencias del Derecho Internacional*, University of the Basque Country, Servicio Editorial, 2001.
- (4) José Ignacio Algueró Cuervo, *El Conflicto del Sahara Occidental, desde una perspectiva canaria*, Colección La Diáspora, Gobierno de Canarias, 2003.
- (5) Maurice Flory, *L' Avis de la Cour Internationale de Justice sur le Sahara Occidental*, *Annuaire Français de Droit International*, p. 266.
- (6) CIJ, *Sahara Occidental. Opinión Consultiva*, 1975: '... The materials and information brought before the court do not establish, however, the existence in the past of any link of territorial sovereignty between the territory of Western Sahara and the Kingdom of Morocco susceptible of affecting application of resolution 1514(XV) of the General Assembly on the decolonisation of Western Sahara, particularly the principle of self-determination by means of the free and genuine expression of the wishes of the peoples of the Territory.'
- (7) José Ramón Diego Aguirre, *Historia del Sahara Español. La verdad de una traición, op.cit.*, p. 739.
- (8) Maurice Mendelson and Susan C. Hulton, *La revendication par L'Irak de la souveraineté sur le Koweit*, *Annuaire Français de Droit International*, XXXVI, 1990, Editions du CNRS, Paris, pp. 195-227.
- (9) MAP/149/mapex, Casablanca, '*Le conseil d'administration de la compagnie OPTORG (spécialisée dans la distribution et le négoce international) s'est réunie le 29 janvier 1993, après l'acquisition le 28 janvier 1993 par ONA (OMNIUM NORD AFRICAINE) international d'une participation de 50.23% dans la compagnie. En remplacement de MM. Salomon, Doumeng, Varda, Chavanel et Pellerin, démissionnaires, ont été cooptés comme administrateurs M. Javier Pérez de Cuéllar, M. Fouad Filali, président directeur Général de ONA... M. Javier Pérez de Cuéllar, ancien secrétaire général de l'ONU est nommé vice-président*'.
- (10) '*L'Algérie est dans une position imprenable pour jouer un rôle de leadership au 21e siècle*', Richard Armitage, Deputy Secretary of State in a speech presenting the US Ambassador to Algiers, reported in *El Moudjahid*, 13/VII/2003.
- (11) '*Les relations avec le Maroc sont une question prioritaire pour l'Espagne. Il est lamentable que l'on ait laissé se créer une crise permanente avec le Maroc. Notre priorité va être d'établir avec le Maroc une relation privilégiée. Plus que jamais, il faut qu'il y ait une complicité entre l'Espagne et le Maroc, entre la France, l'Espagne et le Maroc et entre la France, l'Espagne, le Maroc et le Maghreb...*', interview with Mr Moratinos printed in *Le Figaro*, 5/IV/2004.