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PROFILE

The MINURSO Mandate, Human Rights and the Autonomy Solution for Western Sahara

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ABSTRACT Over recent years, international pressure has been increasing for the inclusion of a human rights monitoring mechanism within the MINURSO mandate, thus putting an end to an anomaly among current UN peacekeeping missions. This profile argues that, in the context of the Moroccan proposal for autonomy as the final settlement of the Western Sahara conflict, it makes little sense for Morocco to spend – as it currently does – extensive political capital on opposing such a mechanism. Territorial autonomy is almost exclusively dealt with within a human rights framework, and respect for human rights is considered a sine qua non for a functioning autonomy. The fear that such monitoring would weaken Moroccan sovereignty seems overblown: autonomy arrangements regularly have international oversight mechanisms built into them.

A Conflict Frozen in Time?

Since 1991, the mandate of the United Nations Mission for the Referendum in Western Sahara (MINURSO) has been regularly extended; the UN Security Council (UNSC) renewed it yet again in late April 2014, for the 42nd time. The casual observer would be forgiven for thinking that if there is one conflict and one peacekeeping mission that are frozen in time, it is the Western Saharan. Since the plans of the then Personal Envoy of the UN Secretary-General for Western Sahara, James Baker, failed to broker a peace deal in 2004, UN mediators have come and gone. Their regular rounds of meetings with the Moroccan government and the Polisario Front (the Spanish abbreviation of Frente Popular para la Liberación de Saguia el-Hamra y Río de Oro, Popular Front for the Liberation of Saguia el-Hamra and Río de Oro – the key independence movement representing the Sahrawi) have been punctuated by similar-sounding, quietly exasperated pronouncements such as – in the most recent summary of the activities of the current Personal Envoy, Christopher Ross – ‘responses [of the parties] remain within the parameters of their

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respective formal proposals, despite the exhortations from many quarters that they go beyond their proposals and demonstrate flexibility in identifying elements of compromise' (UNSC, 2014: 8). In other words, the Moroccan government keeps insisting on its sovereignty over the 'southern provinces' and offering territorial autonomy to the Sahrawis, while Polisario is doggedly seeking full independence for Western Sahara, thereby completing a stalled decolonization process. As a consequence of this, and of the unwillingness of outside powers to force a solution to the conflict on the parties, the peacekeeping mission has become one of the longest in the history of the UN. Its main task – in the absence of an agreement regarding the referendum – has remained limited to monitoring the ceasefire.

The Controversy Over MINURSO Human Rights Monitoring

Under the surface, things have not been so uneventful for the main political protagonists, however – let alone, of course, for the Sahrawis caught in the limbo of the frozen conflict: Many of them have remained for decades in harsh conditions in remote refugee camps near the Algerian town of Tindouf. Families have been split by the parties' restrictions on the freedom of movement and by the berm (wall) separating the Moroccan-controlled and the Polisario-controlled Western Sahara. One main issue that has stirred up tensions between the two sides in recent years pertains to the remit of the MINURSO mandate. Increased pressure has been put on Morocco to accept the inclusion of a human rights monitoring mechanism of both the Moroccan-administered territories and the Polisario-run camps in Algeria, amidst long-standing allegations of serious human rights abuses on both sides. MINURSO is one of the few current peacekeeping operations without such a mechanism.¹ Pressure has come from various quarters: major international human rights NGOs and the UN Secretary-General have persistently called for sustained human rights monitoring. At various points in time states have also raised the issue, including permanent UNSC members such as the US and, reportedly, the UK. Both smaller Western states and developing countries have also showed sympathy for the idea, although developing states such as Costa Rica, Nigeria and South Africa have been more vocal in their support than Western countries, which have as a rule remained discreet on the topic.

In the latest 2014 round of renewal, there was again strong pressure on Morocco to include a human rights mechanism within the MINURSO mandate. A former UN Personal Envoy, Peter van Walsum (who, incidentally, supports a solution to the conflict not involving Sahrawi independence), and a former deputy chief of MINURSO, Frank Ruddy, wrote an open letter to French President François Hollande urging him to 'make a strong call for human rights monitoring to be included in the [MINURSO] mandate' (Ruddy & van Walsum, 2014). A draft copy of the report of the secretary-general to the members of the Security Council in view of the discussions reportedly contained a recommendation for a 'sustained, independent and impartial human rights monitoring mechanism' (What's in Blue, 2014). Even Morocco's closest ally, France, did not, apparently, want to be seen publicly as opposing a human rights mechanism: According to Reuters, the French

Ambassador to the UN, Gerard Araud, ‘vehemently denied that France [had] threatened to veto the idea of U.N. rights monitoring’ (Charbonneau, 2014). In the end, however, the UNSCR resolution merely included some additional language regarding freedom of expression and association and welcomed the visit, planned by Morocco, of representatives from the Office of the High Commissioner for Human Rights, but refrained from including a permanent mechanism.

Feverish Moroccan Diplomatic Action

For each UNSC mandate extension, Morocco has had to deploy substantial diplomatic efforts in order to avoid the inclusion of a human rights monitoring mechanism. First, it has tried to prove that its national mechanisms can do the job, for example extending the activities of its National Council of Human Rights (CNDH) in the region and adopting legislative reforms of the military justice system. Second, it has welcomed punctual visits from the Office of the High Commissioner for Human Rights and the so-called Special Procedures of the UN Human Rights Council (i.e. Special Rapporteurs, Working Groups and Independent Experts on specific human rights issues such as torture). Third, Morocco has threatened to ask MINURSO to leave if such a mechanism would be included, as King Mohammed VI reportedly did in a phone call to UN Secretary-General Ban Ki-moon in 2014. Finally, Morocco has also lobbied and put pressure on its main allies in the UN Security Council, France and the US. It has repeatedly reminded the US of the basic *quid pro quo* between them: it expects staunch support on Western Sahara in exchange for it remaining ‘a vital supporter of the U.S. role in the Israeli–Arab conflict’ and providing ‘a setting in which the CIA and the National Security Agency can operate effectively’ (Saidy, 2011: 88). Thus, when the US signalled sympathy for the inclusion of a human rights mechanism in 2013, Morocco promptly suspended the annual ‘African Lion’ joint US–Moroccan military exercises and substantially stepped up its lobbying targeting US policy makers. The US duly retreated, and in 2014 the US-drafted resolution did not include any monitoring mechanism. France, with its strong economic, political and security ties to Morocco, is rarely in need of reminders. All this notwithstanding, the issue doggedly remains on the agenda, not least due to civil society pressure.

The reasons for Moroccan opposition are twofold. The first is sovereignty: Morocco does not want any aspect of its sovereignty over the territory questioned. Linked to this, it espouses a narrow conception of MINURSO’s role: it should be seen strictly as a UN ceasefire monitoring mission, and such missions do not normally contain a human rights component. Morocco argues that UN human rights monitoring is employed only when a state cannot itself ensure respect for human rights, such as in failed states. Secondly, Morocco believes that the human rights issue has been politicized and is being used against it. From its vantage point, the issue has emanated from countries and organizations hostile to the Moroccan position. It was, for example, recommended in a 2006 non-public (but leaked and widely available) report produced by the Office of the UN High Commissioner for Human Rights, which was rejected by Morocco as partial. Human rights monitoring

has also been a rallying cry of Sahrawi organizations in recent years, and for many of them it is clearly a way of attempting to move towards the right that they most cherish: the right to self-determination. Polisario has officially supported the idea of a human rights monitoring mechanism also operating in the areas it controls, including the Tindouf refugee camps. For instance, it seized the opportunity provided by US support for sustained human rights monitoring in 2013 by forcefully (but, as we have seen, unsuccessfully) pushing the issue within the UN setting. Human rights monitoring has also been furthered by Algeria, a long-standing supporter of Polisario and the main regional rival of Morocco. Thus, in October 2013, the Algerian President Abdelaziz Bouteflika heightened diplomatic tensions between the two countries by denouncing 'massive and systematic human rights violations' in Western Sahara and calling for an international monitoring mechanism (Al-Akhbar, 2013). This was heavily criticized by Morocco as opportunistic, not least given Bouteflika's own domestic record on human rights. Thus, given how the human rights issue has been framed by its opponents, yielding would, to Moroccan policy makers, mean political defeat.

Autonomy, Human Rights Protection and International Monitoring

It is argued here that the inclusion of a human rights mechanism would not only be a sign of good faith and help build much-needed confidence between the parties. Opposing such monitoring also undermines the credibility of the Moroccan proposal for a final settlement to the conflict. Morocco has offered territorial autonomy for the Sahrawi people, a proposal for which the country has gained support from key states, including France, Spain and the US. The Moroccan effort has also been labelled 'serious and credible' in UNSC resolutions since 2007, even though the proposal is strongly opposed by the Polisario Front. In fact, this article argues, autonomy and respect for human rights are closely intertwined both in practice and in theory. First, respect for human rights is considered a *sine qua non* for a functioning autonomy. Second, when territorial and other forms of autonomy are discussed at the international level, it is generally within a human rights framework. Third, the fear that human rights monitoring would weaken Moroccan sovereignty over the region seems overblown, as autonomy arrangements regularly have an international oversight mechanism built into them, not least with regard to respect for human rights.

A main reason why autonomy is perceived as an attractive solution, both in post-conflict and other settings where inter-group tensions run high, is that it offers a way to ensure that all groups within a given state enjoy the same basic human rights, not only 'on paper' but also in practice. Autonomy, in other words, is first and foremost a means to ensure the protection of human rights. Thus, autonomy is seen as a key mechanism to achieve full and effective protection of the right to equality and non-discrimination as well as cultural, linguistic and political/participatory rights across various groups – including numerically small and otherwise vulnerable or marginalized groups. That 'the place of human rights in the autonomous system is very important' (Lapidoth, 1997: 193) is therefore hardly surprising: autonomy means little if it does not ensure that the fundamental rights and civil liberties of the

group(s) perceived as vulnerable are protected. For the Western Sahara case, this entails that the scrupulous protection of human rights must be part of any future autonomy solution, and that working towards autonomy and working towards respect for human rights – and in particular internationally accepted human rights – go hand in hand. Improving the human rights situation and human rights guarantees is thus arguably a way to make autonomy for Western Sahara possible and more likely.

If human rights protection is inherent to autonomy, it is hardly surprising, then, that autonomy is usually discussed within the international framework for the protection of human rights. Autonomy is as a rule analysed in three different, but interlinked, frameworks: minority rights, the rights of indigenous peoples and the right to self-determination. All these three frameworks form part of the wider international framework for the protection of human rights. The Badinter Commission (cited in Lapidoth, 1997: 22) even claims that ‘Article 1 of the two 1966 International Covenants on human rights establishes that the principle of the right to self-determination serves to safeguard human rights’. Moreover, international law since the end of the Cold War has evolved to encompass a somewhat widened definition of what is otherwise a very circumscribed and restricted right to self-determination: in cases of severe and systematic human rights abuses against a particular population, a right to self-determination emerges where none previously existed. Again, all this implies that it would be in the interest of Morocco, more perhaps than of any other party, to make sure that the human rights situation is impartially assessed at the international level and found to be satisfactory. In this context, it also makes little sense to divorce the human rights issue from that of autonomy.

While international supervision of territorial autonomy arrangements have a history going back to post-World War I cases such as the Åland Islands, the Free City of Danzig and the Memel Territory, a number of post-Cold War conflict settlements have also included ‘internationally entrenched, and often internationally supervised, human rights mechanisms’ (Weller, 2010: 2). Thus, internationally secured autonomy is one generally accepted category of territorial autonomy. Internationally secured autonomy is often used in particularly contentious cases which go beyond the borders of one particular state. Given the strong international dimensions of the Western Sahara case, both historically and at present, it is very likely that any autonomy solution to the conflict would have to fall into this category of ‘territories of international concern’ (Hannum, 1990: 370–406). As a consequence, international guarantees for any future Western Saharan autonomy are to be expected. Given the importance of human rights for any autonomy solution, such international guarantees would also presumably encompass human rights. Thus, setting up an international human rights monitoring mechanism could actually be viewed as a potential step towards establishing territorial autonomy.

Conclusion

Morocco has lost credibility at several critical junctures of the Western Sahara conflict – at times unnecessarily so, according to some of the rare more balanced

accounts of the conflict, such as for instance those of the International Crisis Group. Inevitably, its current proposal for autonomy has also been analysed with some scepticism and is not always perceived as credible, including (as leaked cables have revealed) by its closest international allies. This article has argued that Morocco is perhaps again spending political capital unwisely, by blocking MINURSO human rights monitoring. The main Moroccan reasons for doing so – fear of a loss of sovereignty and the perception that a human rights mechanism would mainly serve its political adversaries – are not as convincing as may at first glance seem to be the case. First, it is clear that support for sustained human rights monitoring goes well beyond Polisario and Algeria – even Morocco’s staunchest ally, France, does not want to be seen publicly to oppose it. Human rights guarantees would also perhaps serve Morocco more than its political foes, given how crucial such guarantees are for any solution involving territorial autonomy. International involvement would in fact be in the interest of both sides: it would ensure better protection of the human rights of the Sahrawi, while it would make it more difficult to instrumentalize the human rights issue against Morocco. Second, as this profile has suggested, autonomy arrangements regularly have international oversight mechanisms built into them. The fear that such monitoring would weaken Moroccan sovereignty thus seems overblown. Morocco is misunderstanding autonomy as an international post-conflict resolution mechanism if it thinks that it can work without international guarantees, including of human rights. If the Moroccan government wishes to rely less on its powerful foreign friends and its strategic advantage on the ground, and more on making a credible and justice-based case for its proposed solution to the conflict, accepting a human rights mandate within MINURSO would be a useful step forward.

Note

1. In fact, the head of MINURSO is not even allowed to meet with civil society representatives or human rights activists, except in the presence of the Personal Envoy (UNSC, 2014: 11). In addition, ‘it cannot report even the most blatant violations unless UN personnel are direct witness to such acts. Yet even when MINURSO personnel have witnessed Moroccan abuses in Western Sahara, UN officials in New York have removed the accounts from the secretary-general’s regular reports’ (Zunes & Mundy, 2010: 150).

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