

13

Western Sahara

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I. Introduction

Having been largely forgotten, the Western Sahara conflict appeared to be heating up again in early 2012 when the German multinational, Siemens, landed an order for the construction and maintenance of 22 windmills to be built on a wind farm in Moroccan-occupied Western Sahara.¹ The Western Sahara conflict has lasted more than 40 years now but has yet to see a definitive solution. However, the situation in this part of the world sporadically attracts the attention of the international community. For example, on 14 December 2011 this dispute once again became relevant to the question of where the fish consumed by Europeans comes from. In December 2011, the European Parliament had to take a decision on the extension of the Fisheries Partnership Agreement between Morocco and the European Union (EU).² Somewhat surprisingly, a narrow majority of members of the Parliament voted against the Commission's proposal, which led to the result that the European Parliament rejected the proposed extension of this controversial agreement.³ It called on the Commission to negotiate a new, more environmentally and economically beneficial deal, which should take account of the interests of the Sahrawi population. The protocol, which has applied provisionally since 28 February 2011, ceased to apply immediately. A new protocol was signed on 18 November 2013 and adopted by Council⁴ and Parliament.⁵

¹ Siemens, 'First Wind Orders for Siemens from Africa' (Press statement) (30 January 2012) <<http://www.siemens.com/press/en/pressrelease/?press=/en/pressrelease/2012/energy/wind-power/ewp201201025-wp.htm>> accessed 10 November 2012.

² <<http://www.europarl.europa.eu/oeil/popups/sda.do?id=20895&l=en>> accessed 10 November 2012.

³ Results of vote in Parliament (final vote 14 December 2011) (For: 296, Against: 326, Abstentions: 58) <<http://www.europarl.europa.eu/oeil/popups/sda.do?id=20895&l=en>> accessed 10 November 2012.

⁴ Council decision 2013/720/EU of 15 November 2013 (OJ L 328 of 7 December 2013) on the signing of the new protocol and Council decision 2013/785/EU of 16 December 2013 (OJ L 349 of 21 December 2013) on its conclusion.

⁵ Results of vote in Parliament (final vote 10 December 2013) (For: 310, Against: 204, Abstentions: 49). <http://www.europarl.europa.eu/pdfs/news/expert/infopress/20131206IPR30021/20131206IPR30021_en.pdf> accessed 5 February 2014.

As far as the interrelation with the developments in the CIS states of Transnistria, South Ossetia, Abkhazia, and Nagorno-Karabakh is concerned, one has to make it very clear from the beginning: the nature of the dispute surrounding Western Sahara is unique and it is hard to compare it to the developments in the CIS states discussed in the other case studies in this volume. However, before mentioning its fundamental differences from the situation in Transnistria, South Ossetia, Abkhazia, and Nagorno-Karabakh, it seems necessary to analyse the legal status of Western Sahara and to work out the differences regarding the right to self-determination, secession, and autonomy, as well as to provide an overview of the historical background of this conflict. Finally, the question of using natural resources will be discussed, since it is an ongoing problem.

II. Factual and Historical Background

The territory of Western Sahara encompasses an area of about 280,000 square kilometres with an estimated population of just over 500,000,⁶ many of whom live in Laâyoune, the largest city in Western Sahara. It is situated in the north-west of the African continent, bordered by Morocco to the north, Algeria to the north-east, Mauritania to the east and south, and the Atlantic Ocean to the west, with a coastline of more than 1,000 km. The climate is predominantly a desert environment: hot and dry in summer, cold in winter, with little or no rainfall. While the Sahrawis were originally nomads, most of the population today lives in small towns and villages. The economy is based on agriculture and fishing, primarily destined for local consumption. Rich phosphate deposits are the main export commodity and most probably part of the problem. There also seem to be oil deposits off the Atlantic coast.⁷

Of the territory of Western Sahara, 85% is today occupied and *de facto* administered by Morocco. The remaining parts of the territory are under the control of the *Polisario Front* and administered by the so-called 'Sahrawi Arab Democratic Republic'. The United Nations, however, still considers Spain the administering power of the entire territory,⁸ awaiting the outcome of the ongoing negotiations and the resulting election to be overseen by the United Nations Mission for the Referendum in Western Sahara (MINURSO).

'Spanish Sahara', the former moniker of Western Sahara, was colonized by Spain in 1884.⁹ At this time Spain declared Western Sahara a 'protectorate' and later, in 1958, it was declared a Spanish province.¹⁰ Beginning in 1962, Spain

⁶ Population Division of the Department of Economic and Social Affairs of the United Nations Secretariat, World Population Prospects: The 2010 Revision, <http://esa.un.org/unpd/wpp/unpp/panel_population.htm>.

⁷ H-P Gasser, 'The Conflict in Western Sahara—An Unresolved Issue from the Decolonization Period' (2002) 5 *Yearbook of International Humanitarian Law* 375.

⁸ Since United Nations General Assembly Resolution 34/37 (21 November 1979) UN Doc A/RES/34/37 and UNGA Res 35/19 (11 November 1980) UN Doc A/RES/35/19.

⁹ See *Western Sahara Case* (Advisory Opinion) ICJ Reports 1975, para 77.

¹⁰ T Hodges, *Western Sahara: The Roots of a Desert War* (Lawrence Hill Books 1983) 42 and 153.

as administering power transmitted technical and statistical information on the territory under Article 73 lit. e) of the Charter of the United Nations. This information was examined by the Special Committee with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples.¹¹

In 1963, Western Sahara was included as a Non-Self-Governing Territory under Chapter XI of the UN Charter, after which Spain came under pressure from the UN General Assembly and the Organization of African Unity (OAU) to decolonize Western Sahara and to allow the free exercise of the right to self-determination.¹² Morocco, claiming historical ties with the territory, urged the UN General Assembly to seek an Advisory Opinion from the International Court of Justice (ICJ). At the request of the UN General Assembly, the ICJ issued an Advisory Opinion on 16 October 1975. The Court ruled that the Western Sahara could not be considered *terra nullius* and concluded that there were no legal ties preventing the decolonization of Western Sahara and the self-determination of the Saharawi people in accordance with the Declaration on the Granting of Independence to Colonial Countries and Peoples (UNGA Res 1514 [XV]). On the same day that the Opinion of the Court was given, the situation escalated, with Morocco threatening the so-called 'Green March'—which eventually took place in early November 1975, when 350,000 Moroccans crossed the border of Western Sahara.¹³

The dispute intensified when Spanish control over Western Sahara came to an end on 27 February 1976. The following day, the Sahrawi Arab Democratic Republic (SADR) was proclaimed by the Polisario Front, notwithstanding the occupation by Moroccan and Mauritanian troops. But the Sahrawi people did not gain their independence, and no sovereign state of Western Sahara was born. The SADR was first recognized by Algeria on 6 March 1976 and subsequently by more than 70 states—more than 20 of which, however, have withdrawn their recognition.¹⁴ In 1979, the UN General Assembly recognized the Frente Polisario as the representative of the Saharawi people (UNGA Res 34/37), but the SADR does not have representation at the UN.

After Morocco had annexed the northern two-thirds of Western Sahara in 1976, it claimed the rest of the territory in 1979 when Mauritania gave up its claim and withdrew from the southern part of Western Sahara. A war with the Polisario Front contesting Morocco's sovereignty ended in 1991 in a UN-brokered ceasefire. In the same year the UN peacekeeping mission MINURSO was established. MINURSO's mission was to monitor the ceasefire and to organize and

¹¹ H Corell, 'Letter dated 29 January 2002 from the Under-Secretary-General for Legal Affairs, the Legal Counsel, addressed to the President of the Security Council' (12 February 2002) UN Doc S/2002/161.

¹² On inclusion as Non-Self-Governing territory, see 'Letter dated 29 January 2002 from the Under-Secretary General for Legal Affairs, the Legal Counsel, addressed to the President of the Security Council' (12 February 2002) UN Doc S/002/161, 5. On the OAU's role, see Hodges (n 10) 307–20.

¹³ T Marauhn, 'Sahara' in R Wolfrum (ed), *The Max Planck Encyclopedia of Public International Law* (OUP online 2010), para 9 <www.mpepil.com> accessed 10 November 2012.

¹⁴ Marauhn (n 13).

conduct a referendum, in accordance with the so-called Settlement Plan,¹⁵ which would enable the Sahrawis of Western Sahara to choose between integration with Morocco and independence. The independence referendum was originally scheduled for 1992, but conflicts over voter eligibility prevented it from being held. Both sides blamed each other for stalling the process. In 1997, the Houston Agreement¹⁶ was supposed to restart the process; however, it failed again. In 2003 the Baker Plan¹⁷ was launched to replace the Settlement Plan, but while accepted by the Polisario and unanimously endorsed by Security Council Resolution 1495 (2003), it was rejected by Morocco.

The UN has since 2007 sponsored intermittent talks between representatives of the Government of Morocco and the Polisario Front to negotiate the status of Western Sahara. Morocco has put forward an autonomy proposal for the territory which would allow for some local administration while maintaining Moroccan sovereignty. The Polisario, with Algeria's support, demands a popular referendum that includes the option of independence. Today, MINURSO is still deployed, the UN Special Representative is still trying to find a solution to the contentious issues, and the Security Council continues to appeal to the concerned parties to accept a peaceful solution to the conflict. The MINURSO mandate has been extended 41 times since 1991,¹⁸ most recently by Security Council Resolution 2099 (2013) of 25 April 2013.¹⁹ The Security Council decided to extend the mandate of MINURSO through 30 April 2014 and called 'upon all the parties to cooperate fully with MINURSO, including its free interaction with all interlocutors, and to take the necessary steps to ensure the security of, as well as unhindered movement and immediate access for, United Nations personnel in carrying out their mandate, in conformity with existing agreements'. However, presently there is no plan to hold a referendum, and the viability of the ceasefire is coming into question.

¹⁵ The Settlement Plan was an agreement between the Polisario Front and Morocco on the organization of a referendum which would constitute an expression of self-determination for the people of Western Sahara, leading either to full independence or integration with the kingdom of Morocco. It resulted in a cease-fire which remains effective to this day, and the establishment of the MINURSO peace force to oversee it and to organize the referendum. It was based on an earlier peace proposal by the Organization of African Unity, but this time was organized by the United Nations. Originally introduced in the late 1980s and in 1990 in Security Council Resolution 658, the plan was signed in 1991.

¹⁶ The Houston Agreement was the result of negotiations between the Polisario Front and Morocco on the organization of a referendum which would constitute an expression of self-determination for the people of Western Sahara, possibly leading to full independence or integration within Morocco. The talks were conducted in Houston, USA, under the auspices of UN representative James Baker, in the framework of the 1991 Settlement Plan. The agreement was supposed to lead to a referendum in 1998 after it had been prevented from taking place in 1992 as originally envisioned. This never happened, and the Houston Agreement produced few tangible results.

¹⁷ The Baker Plan (formally, 'Peace Plan for Self-Determination of the People of Western Sahara') is a UN initiative to grant self-determination to Western Sahara. It was intended to replace the Settlement Plan of 1991, which was further detailed in the Houston Agreement of 1997.

¹⁸ UNSC Res 179 (27 April 2011), UN Doc S/Res/179; see also UNSC 'Report of the Secretary-General on the situation concerning Western Sahara' (2012) UN Doc S/2012/197.

¹⁹ The latest document is UN SC Res 2099 (25 April 2013) UN Doc S/Res/2099.

Morocco informed the Secretary-General on 10 May 2012 that it had a number of reservations regarding the current negotiating process and indicated a week later that it had lost confidence in the Secretary-General's Personal Envoy for Western Sahara, Christopher Ross, describing his work as 'unbalanced and biased.' Following this announcement, the Secretary-General asserted that he had complete confidence in Ross. On 25 August 2012, during a phone conversation with King Mohammed VI, Secretary-General Ban Ki-moon stated that the UN did not intend to modify the terms of its mediation and reaffirmed his confidence in Ross. On 15 June 2012, the Secretary-General appointed Wolfgang Weisbrod-Weber (Germany) as his Special Representative and head of MINURSO to succeed Hany Abdel-Aziz (Egypt), who completed his assignment on 30 April 2012.²⁰

III. Legal Analysis

From a legal perspective, three main questions have to be answered: the status of the territory of Western Sahara, the status of Morocco in relation to this territory, and—likewise relevant due to the current situation—the principles of international law governing the use of natural resources in Non-Self-Governing Territories.

1. Legal status of the territory of Western Sahara

According to international law, Western Sahara has the legal status of a Non-Self-Governing Territory. In 1963 Western Sahara was listed as a Non-Self-Governing Territory by the United Nations. Non-Self-Governing Territories are territories that have not yet attained full self-government.²¹ Chapter XI of the UN Charter, entitled 'Declaration Regarding Non-Self-Governing Territories', deals in two articles with the main obligations of the states that control such territories (administering powers). Article 73 states that member states that have assumed responsibilities for the administration of Non-Self-Governing Territories will recognize the interests of the inhabitants of these territories as paramount and accept the obligation to promote, to the utmost, their well-being. The initial 'List of Non-Self-Governing Territories' was created by compiling lists of dependent territories submitted by the administering states themselves. Further, in Article 73 lit. e) of the Charter, member states agree to report annually to the United Nations on the development of Non-Self-Governing Territories under their control.

After Western Sahara's listing as a Non-Self-Governing Territory, Spain was considered the administering power of the territory, and this has not changed to

²⁰ See UNSC, 'Letter dated 12 April 2012 from the Secretary-General addressed to the President of the Security Council' (14 June 2012) UN Doc S/2012/441.

²¹ J Brink, 'Non-Self-Governing Territories' in R Bernhardt (ed), *Encyclopedia of Public International Law III*, (Elsevier 1997) 629.

date. Thus, Spain is *de jure* still the administering power of the Non-Self-Governing Territory, Western Sahara.

2. Moroccan occupation and annexation

Simultaneously, it is also well known that Morocco rejected the ICJ's findings in which the Court rejected the claims of sovereignty made by Morocco and Mauritania over Western Sahara.²² Just days after the decision by the International Court, Morocco occupied (and later annexed) Western Sahara through the famous 'Green March', in which more than 350,000 Moroccans invaded the territory.²³ The UN Security Council responded by adopting three resolutions. The first two reaffirmed UN General Assembly Resolution 1514 and called on the concerned parties to exercise restraint. The third deplored the Green March and called for Moroccan withdrawal.²⁴

UN Security Council Resolution 380 'deplored the holding of the march' and 'call[ed] upon Morocco immediately to withdraw from the Territory of Western Sahara all the participants in the march'. However, this did not dissuade Morocco, which has strengthened its occupation of the territory through military, economic, and other repressive means.

In legal terms, the Moroccan occupation and annexation of the territory constitutes a serious violation of a fundamental, peremptory norm of international law, namely the prohibition of the use of force and aggression.²⁵ International law provides that '[n]o territorial acquisition or special advantage resulting from aggression is or shall be recognized as lawful'.²⁶

Shortly thereafter, in November 1975, a weakened Spanish government secretly agreed to relinquish Western Sahara to Morocco and Mauritania. Morocco, Mauritania, and the colonial power, Spain, entered into an agreement (the Madrid Agreement) which—in convoluted terms—transferred the administration of the territory to Morocco and Mauritania. Mauritania withdrew in 1979.

This Declaration was subsequently registered with the UN Secretariat as a treaty. The agreement did not, however, transfer sovereignty explicitly; nor could it have done so, since Spain had no right to dispose of a territory that belonged to the people of that 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

²² *Western Sahara Case* (Advisory Opinion) ICJ Reports 1975, 12, para 162.

²³ S Koury, 'The European Community and Member States' Duty of Non-Recognition under the EC-Morocco Association Agreement: State Responsibility and Customary International Law' in K Arts and P Pinto Leite (eds), *International Law and the Question of Western Sahara* (IPJET 2007) 165, 166.

²⁴ UNSC Res 377 (22 October 1975) UN Doc S/Res/377; UNSC Res 379 (2 November 1975) UN Doc S/Res/379; UNSC Res 380 (6 November 1975) UN Doc S/Res/380.

²⁵ Presentation by Associate Professor Pål Wrangé, Stockholm University, Seminar 'The EU and Western Sahara: Trading Fish, Ignoring Rights?', European Parliament (7 December 2011); see also RS Clark, 'Western Sahara and the United Nations Norms on Self-Determination and Aggression' in Arts and Leite (n 23) 45, 54.

²⁶ The UN General Assembly's Definition of Aggression, UNGA Res 3314 (XXIX) (14 December 1974) A/Res/3314(XXIX).

transferred.²⁷ As Western Sahara was included in the List of Non-Self-Governing Territories and the people of Western Sahara had the right to self-determination, Spain could no longer unilaterally decide to change the legal status of the territory.²⁸ Spain, as a member of the United Nations, had accepted its responsibilities as the administering power of the territory and as such had to respect the interests and wishes of the people of Western Sahara and acknowledge the role of the United Nations in realizing their right to self-determination. Therefore, Spain could transfer neither sovereignty nor its responsibilities for the territory to another state or states.²⁹ Thus, the legal basis for the Western Sahara self-determination entitlement lies in its relationship with the former colonial power (Spain) and not with the occupying power (Morocco),³⁰ even if one argues that the 1975 agreement as such is in accordance with international law. Given the developments since then, this question is only of limited relevance. It should be sufficient to conclude that under the agreement, Spain would remain responsible.

However, on 26 February 1976, Spain informed the Secretary-General that as of that point it had terminated its presence in Western Sahara and relinquished its responsibilities over the territory, thus leaving it in fact under the administration of both Morocco and Mauritania in their respective controlled areas. Following the withdrawal of Mauritania from the territory in 1979, upon the conclusion of the Mauritano-Sahraoui agreement of 19 August 1979 (S/13504, Annex I), Morocco has administrated the territory of Western Sahara alone. 'Morocco however, is not listed as the administering Power of the territory in the United Nations 'List of Non-Self-Governing Territories', and has, therefore, not transmitted information on the territory in accordance with Article 73 lit. e) of the United Nations Charter.'³¹

Since then, Morocco has exercised its *de facto* authority in the territory. It has used its military power to control the territory, to suppress the quest of the people of Western Sahara for self-determination, and to claim the territory as part of Morocco. It has neither claimed the role of administering power nor has it been granted such a role by the United Nations under Article 73 of the Charter. Despite the fact that its presence in the territory started with consent under the legal authority of Spain as the administering power, from the outset—and as a result of its claims that the territory is part of Morocco—it must be regarded as an occupying power rather than as an administering power under the UN Charter.

Consequently, the annexation of Western Sahara was not lawful and has therefore not been recognized by any state.³² Western Sahara is occupied, as confirmed twice by the General Assembly.³³ In Resolution 34/37 (1979), the General

²⁷ Corell (n 11); L Hannikainen, 'The Case of Western Sahara from the Perspective of Jus Cogens' in Arts and Leite (n 23) 59, 66.

²⁸ M Brus, 'The Legality of Exploring and Exploiting Mineral Resources in Western Sahara' in Arts and Leite (n 23) 201, 205.

²⁹ Brus (n 23).

³⁰ C Drew, 'The Meaning of Self-Determination: "The Stealing of the Sahara" Redux?' in Arts and Leite (n 23) 87, 92.

³¹ Corell (n 11).

³² Hannikainen (n 27) 59, 68.

³³ UNGA Res 34/37 (21 November 1979) UN Doc A/RES/34/37; UNGA Res 35/19 (11 November 1980) UN Doc A/RES/35/19.

Assembly ‘deeply deplore[d] the aggravation of the situation resulting from the continued occupation of Western Sahara by Morocco and the extension of that occupation to the territory recently evacuated by Mauritania’.³⁴ In Resolution 35/19 (1980), the General Assembly again declared that it is ‘deeply concerned at the aggravation of the situation deriving from the continued occupation of Western Sahara by Morocco and from the extension of that occupation to the part of Western Sahara which was the subject to the peace agreement concluded on 10 August 1979 between Mauritania and the Frente Popular para la Liberación de Saguia el-Hamra y de Río de Oro...’.³⁵

The laws of occupation limit Morocco’s actions towards the occupied population and its territory, while enabling it to ensure the security of its military presence. Article 43 of the 1907 Hague Regulations Respecting the Laws and Customs of War on Land stipulates:

The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.³⁶

To sum up the legal status: Western Sahara is not a part of Morocco and Morocco has no legal title or claim to the territory. Since the annexation is illegal, it is null and void, and Morocco is therefore, legally speaking, an occupying power. Morocco has an obligation to respect the right of the people of Western Sahara according to the law of occupation and to end its illegal annexation and occupation of Western Sahara.

3. Right to self-determination

Furthermore, the people of Western Sahara have a right to self-determination which can be realized through the creation of a fully sovereign state or in any other modality that the people of Western Sahara choose.³⁷ Therefore, in 1966 the UN General Assembly adopted its first resolution³⁸ on the territory, urging Spain to organize, as soon as possible, a referendum under UN supervision on the territory’s right to exercise its right to self-determination.

³⁴ UNGA Resolution 34/37 (21 November 1979) UN Doc A/RES/34/37, 5.

³⁵ UNGA Resolution 35/19 (11 November 1980) UN Doc A/RES/35/19, 3.

³⁶ This is translated from the French text, the only authentic version of the 1907 Hague Regulations Respecting the Laws and Customs of War on Land, annexed to the 1907 Hague Convention Respecting the Laws and Customs of War on Land, the Hague, 18 October 1907. The English ‘public order and safety’ is not an adequate translation of the French ‘l’ordre et la vie public’. Several provisions make this duty more concrete, such as Arts 55–56 of the IV Geneva Convention, on food and health care. See also Arts 72–79, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I).

³⁷ P Wrange, ‘The Swedish Position on Western Sahara and International Law’ in Arts and Leite (n 23), 299, 300; see also UNGA Res 1514 (XV) (14 December 1960) UN Doc A/RES/1514(XV); Res 1541 (XV) (15 December 1960) UN Doc A/Res/1541(XV); *Western Sahara Case* (Advisory Opinion) ICJ Reports 1975, paras 57–58.

³⁸ UNGA Res 2229 (XXI) (20 December 1966) UN Doc A/RES/2229(XXI).

The right to self-determination, a fundamental principle of human rights law,³⁹ is an individual and collective right to 'freely determine . . . political status and [to] freely pursue . . . economic, social and cultural development'.⁴⁰ The International Court of Justice refers to the right to self-determination as a right held by people rather than a right held by governments alone⁴¹ and has further elaborated the status and scope of the right in international law:

The principle of self-determination as a right of peoples, and its application for the purpose of bringing all colonial situations to a speedy end, were enunciated in the Declaration on the Granting of Independence to Colonial Countries and Peoples. . . The validity of the principle of self-determination defined as the need to pay regard to the freely expressed will of the peoples is not affected by the fact that in certain cases the General Assembly has dispensed with the requirement of consulting the inhabitants of a given territory. . .⁴²

In the case of Western Sahara, the ICJ concluded by 14 votes to two that while there had been precolonial ties between Morocco and some tribes in the territory of Western Sahara, these ties did not imply sovereignty:

. . . the Court's conclusion is that the materials and information presented to it do not establish any tie of territorial sovereignty between the territory of Western Sahara and the Kingdom of Morocco or the Mauritanian entity. Thus the Court has not found legal ties of such a nature as might affect the application of General Assembly resolution 1514 (XV) in the decolonization of Western Sahara and, in particular, of the principle of self-determination through the free and genuine expression of the will of the peoples of the Territory.⁴³

Therefore, the ICJ rejected the claims of sovereignty made by Morocco and Mauritania over Western Sahara.⁴⁴ It became clear that the Court made two significant findings: first, it found that the territory was not a territory unoccupied by any people and thus not *terra nullius*; second, the Court asserted that no links of sovereignty existed between the territory of Western Sahara and its neighbours Morocco and Mauritania. Thus there were no ties that would affect the application of General Assembly Resolution 1514 (XV) granting the right to self-determination.

³⁹ The Universal Declaration of Human Rights provides that the will of 'the people shall be the basis of the authority of government'. Universal Declaration of Human Rights, UNGA Res 217A (III) (10 December 1948) UN Doc A/RES/3/217A, Art. 21; The International Covenant of Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), Art. 1; The International Covenant on Economic, Social and Cultural Rights (adopted 19 December 1966, entered into force 3 January 1976) 999 UNTS 3 (ICESCR), Art. 1.

⁴⁰ ICCPR, Art. 1; ICESCR, Art. 1; see also K Parker and L Neylon, 'Jus Cogens: Compelling the Law of Human Rights' (1989) 12 HICLR 411, 440, drawing on discussion of the right to self-determination in A Critescu, 'The Right to Self-determination' UN Doc E/CN.4/Sub.2/404/Rev.1 (1980) UN Sales No E.80.XIV.3; H. Gros Espiell, 'The Right to Self-Determination' UN Doc E/CN.4/Sub.2/405/Rev.1 (1980) UN Sales No E.79.XIV.5.

⁴¹ *Western Sahara Case* (Advisory Opinion) ICJ Reports 1975, 31.

⁴² *Western Sahara Case* (Advisory Opinion) ICJ Reports 1975, para 59.

⁴³ *Western Sahara Case* (Advisory Opinion) ICJ Reports 1975, 68 [162].

⁴⁴ *Western Sahara Case* (Advisory Opinion) ICJ Reports 1975, 12 et seq.; see also Hannikainen (n 27) 59, 65.

Resolution 1514⁴⁵ is the famous resolution on decolonization adopted by the General Assembly on 14 December 1960 and subtitled 'Declaration on the Granting of Independence to Colonial Countries and Peoples'. It provides for the granting of independence to colonial countries and peoples in providing an inevitable legal linkage between self-determination and its goal of decolonization, and postulated a new international law-based right of freedom also in economic self-determination. Article 5 states:

Immediate steps shall be taken in Trust and Non-Self-Governing Territories, or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom.

Moreover, on 15 December 1960 the General Assembly adopted UN General Assembly Resolution 1541 (XV), subtitled 'Principles Which Should Guide Members in Determining Whether or Not an Obligation Exists to Transmit the Information Called For Under Article 73 Lit. E) of the UN Charter'.⁴⁶ Article 3 provided that '[i]nadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence'.⁴⁷ In 1961 the General Assembly created the Special Committee popularly referred to as the Special Committee on Decolonization to ensure decolonization in complete compliance with the principle of self-determination in the UN General Assembly Resolution 1541 (XV), with 12 principles of the Annex defining free association with an independent state, integration into an independent state, or independence as the three legitimate options of full self-government compliance with the principle of self-determination.

Following the decision of the ICJ, the right to self-determination of the people of Western Sahara has been reaffirmed many times by the General Assembly⁴⁸ and by the Security Council,⁴⁹ most recently in Resolution 2099 of 25 April 2013. In para. 7, the Security Council calls again

[u]pon the parties to continue negotiations under the auspices of the Secretary-General without preconditions and in good faith, taking into account the efforts made since 2006 and subsequent developments, with a view to achieving a just, lasting, and mutually acceptable political solution, which will provide for the self-determination of the people of Western Sahara in the context of arrangements consistent with the principles and purposes

⁴⁵ UNGA Res 1514 (XV) (14 December 1960) UN Doc A/RES/1514(XV) (Declaration of the Granting of Independence of Colonial Countries and Peoples).

⁴⁶ UNGA Res 1541 (XV) (15 December 1960) UN Doc A/RES/1541(XV) (Principles which should guide members in determining whether or not an obligation exists to transmit the information called for under Article 73e of the Charter).

⁴⁷ UNGA Res 1541 (XV) (15 December 1960) UN Doc A/RES/1541(XV) Article 3.

⁴⁸ UNGA Res 3458 (XXX) (10 December 1975) UN Doc A/RES/3458(XXX) declared unequivocally that the GA '1. Reaffirms the inalienable right of the people of Spanish Sahara to self-determination, in accordance with GA Res 1514 (XV)'.
⁴⁹ UNSC Res 377 (22 October 1975) UN Doc S/Res/377, UNSC Res 379 (2 November 1975) UN Doc S/Res/379 and UNSC Res 380 (6 November 1975) UN Doc S/Res/380, on the situation concerning Western Sahara.

of the Charter of the United Nations, and noting the role and responsibilities of the parties in this respect...⁵⁰

Consequently, there is no doubt whatsoever that the people of Western Sahara have a right to self-determination; however, this is yet to be realized.

4. The role of the United Nations, MINURSO and the Referendum

Initially the Organization for African Unity sought to help the people of Western Sahara to exercise their right, but when the OAU admitted the SADR as a member in 1981, Morocco left the organization and African efforts were stymied. In 1988, the OAU handed the issue to the United Nations, which agreed to handle it in conformity with its GA Resolution 1514 (XV) on self-determination under Chapter VI of the Charter, requiring the consent of the parties concerned.

Its settlement plan, accepted by the parties in 1988, focused on a ceasefire and a final-status referendum. The Security Council later set up a UN Mission for the Referendum in Western Sahara (MINURSO) in 1991 and appointed a succession of Special Representatives of the Secretary-General (SRSGs) and Special Envoys to oversee the process. Those currently in place are Wolfgang Weisbrod-Weber (Germany),⁵¹ Special Representative of the Secretary-General for Western Sahara and Head of MINURSO, and Christopher Ross⁵² (United States), Personal Envoy of the Secretary-General for Western Sahara.

From 1976 until the ceasefire in September 1991, following the 1988 Settlement Plan brokered by the United Nations and the Organization of African Unity, Sahrawi combatants, backed by Algeria, fought Moroccan and until 1979, Mauritanian troops. On 19 April 1991 the UNSC finally passed Resolution 690, which outlined a detailed plan for the holding of a free and fair referendum and the setting up of a UN Mission (MINURSO) to conduct the referendum. However, the situation remained at stalemate.

In April 2006, in a more or less radical departure from erstwhile UN policy, the United Nations Secretary-General recommended that the United Nations should 'step back'⁵³ from its attempts to formulate a 'Plan' for self-determination for Western Sahara in favour of direct negotiations between the parties.⁵⁴ In his report S/249/2006,⁵⁵ the Secretary-General, among other things, endorses his Personal Envoy's recommendation for direct negotiations among the parties, to be

⁵⁰ UNSC Res 2099 (25 April 2013) UN Doc S/Res/2099.

⁵¹ See 'Letter dated 12 April 2012 from the Secretary-General addressed to the President of the Security Council' (14 June 2012) UN Doc S/2012/441.

⁵² See 'Letter dated 6 January 2009 from the Secretary-General addressed to the President of the Security Council' (8 January 2009) UN Doc S/2009/19.

⁵³ *Report of the Secretary-General on the situation concerning Western Sahara* (19 April 2006) UN Doc S/2006/249 [35].

⁵⁴ *Report of the SG on the Situation Concerning Western Sahara* (19 April 2006) UN Doc S/2006/249.

⁵⁵ *Report of the SG on the Situation Concerning Western Sahara* (19 April 2006) UN Doc S/2006/249.

held 'without preconditions'. The negotiations should work out a compromise that would produce a just, lasting, and mutually acceptable political solution, providing for the self-determination of the people of Western Sahara. Against the background of occupation and annexation described above, the wording is surprising:

32. ... Once the Security Council recognized the political reality that no one was going to force Morocco to give up its claim of sovereignty over Western Sahara, it would realize that there were only two options left: indefinite prolongation of the current deadlock in anticipation of a different political reality; or direct negotiations between the parties. . .

34. What remained therefore was a recourse to direct negotiations, which should be held without preconditions. Their objective should be to accomplish what no 'plan' could, namely to work out a compromise between international legality and political reality that would produce a just, lasting and mutually acceptable political solution, which would provide for the self-determination of the people of Western Sahara.

35. After years of reliance on United Nations-sponsored plans, it should be made clear to the parties that the United Nations was taking a step back and that the responsibility now rested with them.⁵⁶

Thereby the Secretary-General's recommendation followed the briefing of his former Personal Envoy Peter van Walsum,⁵⁷ who concluded that, due to Moroccan opposition, holding a referendum that included the option of independence was no longer possible, and that a new approach of direct negotiations was necessary as 'the only alternative to the indefinite prolongation of the impasse'.⁵⁸ One year later, the recommendation of Secretary-General Kofi Annan was reiterated by his successor,⁵⁹ and on 30 April 2007 the Security Council unanimously adopted Resolution 1754, calling upon the parties:

[t]o enter into negotiations without preconditions in good faith, taking into account the developments of the last months, with a view to achieving a just, lasting and mutually acceptable political solution, which will provide for the self-determination of the people of Western Sahara.⁶⁰

The UN Security Council, in realistic desperation, dropped the idea of a referendum and called on the parties to negotiate a solution. However, the Secretary-General was well advised when he made it very clear that:

37. ... The Security Council would not be able to invite parties to negotiate about Western Saharan autonomy under Moroccan sovereignty, [since] such wording would imply

⁵⁶ *Report of the SG on the Situation Concerning Western Sahara* (19 April 2006) UN Doc S/2006/249, 32f.

⁵⁷ For a summary of the Personal Envoy's reasoning, see *Report of the Secretary-General on the Situation concerning Western Sahara* (19 April 2006) UN Doc S/2006/249, 31–46.

⁵⁸ See 'Briefing to the Security Council' (18 January 2006) summarized in *Report of the Secretary-General on the Situation concerning Western Sahara* (16 October 2006) UN Docs S/2006/817 [14].

⁵⁹ *Report of the Secretary-General on the Situation concerning the Western Sahara*, UN Doc S/2007/2002, 13 April 2007, para 47.

⁶⁰ UNSC Res 1754 (2007), 30 April 2007, no 2.

recognition of Moroccan sovereignty over Western Sahara, which was out of the question as long as no Member States of the United Nations had recognized that sovereignty...⁶¹

Consequently, he recalled the Advisory Opinion of the ICJ, which concluded that there were no valid reasons why the rules for decolonization and self-determination, as contained in General Assembly Resolution 1514 (XV), should not apply to Western Sahara. In this context, the Secretary-General observed that the Advisory Opinion had been handed down more than 30 years previously and the resolution had still not been implemented. In reference to that inordinate lapse of time, he observed that a solution to the question of Western Sahara could only be achieved if the parties worked to seek a mutually acceptable compromise based upon relevant principles of international law and current political realities.

However, the observation by the Secretary-General that the Security Council would not be able to invite parties to negotiate about Western Saharan autonomy under Moroccan sovereignty was urgently needed, because 'on the traditional understanding of self-determination, for the Security Council to abandon its commitment to a referendum in favour of negotiations between the parties runs contrary to the international law of self-determination'.⁶²

The International Court of Justice famously interpreted the 1960 Colonial Declaration⁶³ as 'confirming' and 'emphasizing' 'that the application of the right of self-determination requires a free and genuine expression of the will of the peoples concerned'.⁶⁴ Its 'essential feature'⁶⁵ was free choice.⁶⁶ In other words, 'it is to the Western Sahara Advisory Opinion that self-determination scholars turn for authority that, despite the pro-independence proclivities of some provisions of early resolutions, the proper interpretation of the right of self-determination is that it confers a right, not to a particular *outcome*, but to a particular *process*—one that entails "the freely expressed will of peoples".⁶⁷ However, since a referendum does not in fact seem to be a promising approach in order to solve the problem, one has to follow the way of direct political negotiation.

5. Comparison with the Situation in the CIS

As previously mentioned, the conflict in the Western Sahara is hard to compare with any other situation presented in the case studies discussed in this volume. Western Sahara is a case of decolonization in an otherwise predominantly autonomist and secessionist era. Neither Transnistria nor South Ossetia, Abkhazia, or

⁶¹ *Report of the SG on the Situation Concerning Western Sahara* (19 April 2006) UN Doc S/2006/249 [37].

⁶² Drew (n 30) 88.

⁶³ *Declaration on the Granting of Independence to Colonial Countries and Peoples* (14 December 1960) UNGA Res 1514 (XV).

⁶⁴ *Western Sahara Case* (Advisory Opinion) ICJ Reports 1975, para 55; A Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (Cambridge University Press 1995) 88.

⁶⁵ *Western Sahara Case* (Advisory Opinion) ICJ Reports 1975, para 57.

⁶⁶ Drew (n 30) 91.

⁶⁷ See Drew (n 30) 91; eg Cassese (n 64) 89.

Nagorno-Karabakh have a decolonization background. The question of whether the Soviet Constitution established a right to secession for autonomous regions has to be answered by former national law.

As far as international law is concerned, one cannot, however, transfer the above described rules concerning the right to self-determination to a situation of decolonization. The ICJ in the *Western Sahara Case*⁶⁸ referred first to the right to self-determination as a right held by people rather than a right held by governments alone. It further elaborated the status and scope of the right in international law. The Court made it very clear that its interpretation of the right to self-determination was done in the context of 'its application for the purpose of bringing all colonial situations to a speedy end, [which was] enunciated in the Declaration on the Granting of Independence to Colonial Countries and Peoples...'⁶⁹

When discussing the right to 'external self-determination' in connection with Transnistria, South Ossetia, Abkhazia, or Nagorno-Karabakh, the fundamental difference lies in the historical and factual background of decolonization.

Beyond the context of colonialism or alien occupation, the existence, scope and meaning of the right to self-determination remains contentious.⁷⁰ Antonio Cassese, for example, argues that what normatively distinguishes the international rules on self-determination relating to colonial peoples is that they 'specify the techniques for ascertaining the wishes of the population concerned (plebiscites or referendums)⁷¹ and, together with the rules relating to peoples subject to alien or foreign occupation, confer the right to choose independence:

...the right to external self-determination which entails the possibility of choosing (or restoring) independence, has only been bestowed upon two classes of people (those under colonial rule or foreign occupation) ...⁷²

This was, for example, different when the recommendation of the Special Envoy of the Secretary-General in favour of 'supervised' secession of Kosovo was accompanied by repeated statements in favour of its uniqueness and non-precedential value:⁷³

More crucially, it is only in the decolonisation context that there is disciplinary consensus on the content of self-determination—that it confers on a people a right to a free choice that includes the option of independent statehood.⁷⁴

⁶⁸ *Western Sahara Case* (Advisory Opinion) ICJ Reports 1975, para 31.

⁶⁹ *Western Sahara Case* (Advisory Opinion) ICJ Reports 1975, para 59.

⁷⁰ *Western Sahara Case* (Advisory Opinion) ICJ Reports 1975, 93 et seq.; see eg J Crawford, 'The Right of Self-Determination in International Law: Its Future and Development' in P Alston (ed), *Peoples' Rights* (OUP 2001) 38.

⁷¹ Cassese (n 64) 88.

⁷² Cassese (n 64) 334. This was recognized by the UN Secretary-General in relation to the Western Sahara in 2003: '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'. *Report of the Secretary General on the Situation Concerning Western Sahara* (23 May 2003) UN Doc S/003/565, 52.

⁷³ 'Kosovo is a unique case that demands a unique solution. It does not create precedent for other unresolved conflicts.' *Report of the Special Envoy of the Secretary-General on Kosovo's Future Status* (26 March 2007) UN Doc S/2007/168, 15.

⁷⁴ Drew (n 30) 87, 94.

The UN Charter states (Article 1) that the principle of equal rights and self-determination of peoples is one of the purposes of the Organization, and Chapter VI of the Charter makes clear that the primary concern is to support self-government and development of those people who have 'not yet attained a full measure of self-government'. The Declaration on the Granting of Independence to Colonial Territories of 1960⁷⁵ points out that this notion was to be interpreted as 'decolonization'.⁷⁶ The General Assembly also specified in a later resolution that the right of peoples to self-determination cannot be interpreted as 'authorising or encouraging an action, no matter what it is, which would disrupt or threaten, partially or totally, the territorial integrity or political unity of an independent and sovereign State'.⁷⁷ From this development the conclusion is to be drawn that the United Nations law recognizes self-determination in the context of decolonization, but expressly rejects self-determination as a justification for secession.

In short, on the Western Sahara understanding of the meaning of the right to self-determination, identifying colonialism as the legal basis for self-determination is significant because it places that entitlement of Western Sahara at the very top of a normative hierarchy both in terms of the status and the content of the right.⁷⁸ Therefore, because of its exclusive colonial background, no conclusion can be drawn from the case study of the Western Sahara concerning the right to self-determination for the CIS states, or any other situation without a colonial background.

6. Use of natural resources

In the light of recent developments, there is one other aspect of self-determination that should not remain unconsidered: the sovereignty over and use of natural resources.⁷⁹ In November 2001, the Members of the Security Council requested the opinion of the United Nations Legal Counsel on 'the legality in the context of international law, including relevant resolutions of the Security Council and the General Assembly of the United Nations, and agreements concerning Western Sahara of actions allegedly taken by the Moroccan authorities consisting in the offering and signing of contracts with foreign companies for the exploration of mineral resources in Western Sahara'.⁸⁰

As mentioned, Morocco is, legally speaking, an occupying power. The basic principles of belligerent occupation apply: the occupying power may not change

⁷⁵ UNGA Res 1514 (XV) (14 December 1960) UN Doc A/RES/1514(XV).

⁷⁶ M Craven, 'Statehood, Self-determination, and Recognition' in M Evans (ed), *International Law* (3rd edn, OUP 2010) 231.

⁷⁷ *Friendly Relations Declaration*, UNGA Res 2625 (XXV) (24 October 1970) UN Doc A/Res/2625(XXV).

⁷⁸ Drew (n 30) 87, 94.

⁷⁹ A basic source on the status of the natural resources of peoples who have not had the chance to exercise their right of self-determination is common Art. 1(2) of the 1966 Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights.

⁸⁰ See 'Letter dated 29 January 2002 from the Under Secretary-General for Legal Affairs, the Legal Counsel, addressed to the President of the Security Council' (12 February 2002) UN Doc S/2002/161.

the legal and political framework and should proceed from the premise that the occupation is a temporary status and that the occupying power may not introduce permanent changes into the occupied territory.⁸¹ Furthermore, Western Sahara is still a Non-Self-Governing Territory in UN terms, and its people have a right to permanent sovereignty over its natural resources and the right to 'freely dispose of their natural wealth and resources', as provided in Article 1(2) of the two UN Covenants on Human Rights.

Since Morocco has no legal right to govern the territory, it has no legal title to the natural resources of Western Sahara. Consequently, Morocco has no right as a sovereign to dispose of such natural resources for her own purposes. Furthermore, any agreement that Morocco enters into with other countries cannot cover Western Sahara as a part of Morocco.

Nevertheless, under some circumstances Morocco may use the natural resources of the territory. Morocco has a responsibility to uphold order as well as the *vie public* (public life and welfare), as is provided in the Hague Convention of 1907 and in the 1949 Fourth Geneva Convention.⁸² This means that Morocco must offer basic public goods to the population of Western Sahara, which entails that there must be income to pay for these goods. Consequently, Morocco may make arrangements with regard to the resources of Western Sahara, provided that they benefit the Sahrawi people. This would be particularly appropriate with regard to renewable resources, such as sustainable and reasonable fishing. The principle of self-determination further requires that the people of Western Sahara should be able to influence how this is done.

In a situation where it is clear that the administering power is not interested in the aspiration of the people of the territory, but has other interests which dominate its agenda, it is not easy to distinguish between economic activities undertaken in the territory that are in the interests of the people of the territory and those that are not. However, it should be clear that these economic activities and investments are in the interest and to the benefit of the people of the territory and are undertaken, as far as possible, in collaboration with the representatives of the people of the territory.

Even if Western Sahara, contrary to my argument above, was not occupied but merely 'administered', the fact remains that the rules governing the administration of Non-Self-Governing Territories point in the same direction as the law of occupation. This is provided for in Article 73 of the UN Charter and was developed in a legal opinion by the then UN Legal Counsel, Hans Corell, in 2002.⁸³ The opinion concluded, with regard to oil exploration, that if:

⁸¹ See Article 43 of the 1907 Hague Regulations and in particular concerning the 'Change of Legislation and Changes to Institutions'; M Sassòli, 'Legislation and Maintenance of Public Order and Civil Life' (2005) 16 EJIL 4, 661, 671.

⁸² Wrange (n 37) 299, 301.

⁸³ 'Letter dated 29 January 2002 from the Under Secretary-General for Legal Affairs, the Legal Counsel, addressed to the President of the Security Council' (12 February 2002) UN Doc S/2002/161.

further exploration and exploitation activities were to proceed in disregard of the interests and wishes of the people of Western Sahara, they would be in violation of the international law principles applicable to mineral resource activities in Non-Self-Governing Territories.

Consequently, 'Morocco may not dispose of the resources of Western Sahara for her own benefit; any agreement entered into by Morocco in her own name does not cover Western Sahara, since Western Sahara is not a part of Morocco; Morocco may enter into agreements regarding the use of natural resources as an occupying or *de facto* administering power with regard to the territory of Western Sahara *but only provided that* any such agreement must be for the *benefit* of the *people* of Western Sahara *and* according to the *wishes* of that people'.⁸⁴

A significant source of controversy in this regard concerns the inclusion of fishing in the waters off Western Sahara and the Fisheries Partnership Agreement (FPA) between the European Union and Morocco.⁸⁵ One of the issues to consider is whether or not the local population of Western Sahara has been benefitting from the agreement. Because according to the 2002 opinion by the then UN Legal Counsel *Hans Corell*, mentioned above, any exploration or exploitation activities in Western Sahara can only proceed if they are to the benefit of, and in accordance with, the wishes of the people of Western Sahara.

In late 2009, the legal service of the European Parliament provided an opinion about the FPA and Western Sahara. The legal service found that 'compliance with international law requires that economic activities related to the natural resources of a Non-Self-Governing Territory are carried out for the benefits of the people of such Territory, and in accordance with their wishes'. Further,

[i]n the event that it could not be demonstrated that the FPA was implemented in conformity with the principles of international law concerning the rights of the Saharawi people over their natural resources, principles which the Community is bound to respect, the Community should refrain from allowing vessels to fish in the waters off Western Sahara by requesting fisheries licences only for fishing zones that are situated in the waters off Morocco.⁸⁶

Consequently, it is illegal to enter into an agreement with Morocco which explicitly or implicitly recognizes the annexation of Western Sahara; any agreement that covers Western Sahara must clarify that the territory is legally not under Moroccan sovereignty. Further, it means that any such agreement should not strengthen the Moroccan occupation and hence should not support measures that strengthen Moroccan control or that facilitate Morocco's transfer of settlers into the territory. In addition, as was explained above, if an agreement is concluded that covers fishing or other natural resources, it must be to the *benefit* of the Saharawi *people* and in accordance with their wishes.

⁸⁴ *Wrange* (n 25) (italics in original).

⁸⁵ Council Regulation (EC) No 764/2006 'Fisheries Partnership Agreement between the European Communities and the Kingdom of Morocco' [2006] OJ L 141/4–8; for the current status see <http://ec.europa.eu/fisheries/cfp/international/agreements/morocco/index_en.htm>.

⁸⁶ 'Legal Opinion regarding the Fisheries Partnership Agreement between the European Community and the Kingdom of Morocco by the European Parliament's Legal Service' [2009] SJ-0269/09, D(2009)37828 of 14 July 2009.

Otherwise the EU should consider either the suspension of the agreement or its application in such a way that EU-flagged vessels are excluded from the exploitation of the waters of Western Sahara. A legally sound example is the 2004 Free Trade Agreement (FTA) between the United States and Morocco, which explicitly excludes Western Sahara from its operation.⁸⁷ This FTA does not include services or goods originated in the Western Sahara due to the latter's status as a Non-Self-Governing Territory⁸⁸ and as the US does not recognize Moroccan sovereignty over the disputed territory.⁸⁹

Since any exploitation of its natural resources must be in accordance with the wishes and interests of the people of Western Sahara, the European Parliament made the right choice in 2011 when it decided to draw attention to that point. If the agreements stay in line with the wishes and interests of the people of Western Sahara, there is no reason not to conclude them. However, if exploration and exploitation activities were to proceed in disregard of the interests and wishes of the people of Western Sahara, they would be in violation of the principles of international law applicable to the use of natural resources in Non-Self-Governing Territories.

⁸⁷ See <http://www.moroccousafta.com/index_ang.htm> accessed 10 November 2012.

⁸⁸ 'Rep. Pitts Lauds Protection of Sahrawis in Morocco Trade Pact' (22 July 2004) <<http://web.archive.org/web/20110629044535/http://www.house.gov/pitts/press/releases/040722r-FTAwsahara.htm>> accessed 10 November 2012.

⁸⁹ Hannikainen (n 27) 59, 69.