

## THE CONFLICT IN WESTERN SAHARA – AN UNRESOLVED ISSUE FROM THE DECOLONIZATION PERIOD<sup>1</sup>

Hans-Peter Gasser<sup>2</sup>

### 1. INTRODUCTION

The territory of Western Sahara has an area of about 280,000 sq. km and approximately 250,000 inhabitants, known as Sahrawis. It is situated in the north-west of the African continent, where the Sahara Desert meets the Atlantic Ocean, and has a coastline of more than 1,000 km. In the north, Western Sahara has a common border of 443 km with Morocco, and in the south and west it is bordered by Mauritania (1,561 km). The territory also has a short common border of 42 km with Algeria. The climate is predominantly that of the desert: hot and dry in summer, cold in winter, with little or no rainfall. In the coastal regions vegetation may be abundant. While the Sahrawis were originally nomads, most of the population now 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. There seem to be oil deposits off the Atlantic coast.

Following (and with the blessing of) the Berlin West Africa Conference of 1884, Spain established a protectorate in the same year over a territory called at that time Rio de Oro and now known as Western Sahara. However, the colonial power's effective control was confined to areas along the coast, where the main settlements were to be found. Little is known of the colonial period, except that resistance by some of the local population to the Spanish colonial power was already making itself felt at the beginning of the Twentieth Century. In the 1960s, the first claims to self-determination were voiced, and the first Sahrawi movements demanding independence for Western Sahara appeared on the scene. The Polisario Front, the main Sahrawi liberation movement, was formed in 1973 and started to wage a guerrilla war against the colonial power.

As early as 1956, Morocco, the neighbouring country to the north, had laid claim to part of Western Sahara. A few years later, Mauritania made known its interest in the southern part of the territory.

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2. Former Senior Legal Adviser, International Committee of the Red Cross, Member of the Board of Editors, *Yearbook of International Humanitarian Law*.

In 1974 the United Nations expressed its concern about the situation.<sup>3</sup> In order to ascertain the Sahrawi population's wishes with regard to their future, the General Assembly decided that a referendum should be held and that, as a condition for a successful outcome of the voting procedure, a census of the Sahrawi population should be organized in order to compile a list of those entitled to take part in the referendum. The General Assembly also asked the International Court of Justice for an advisory opinion on legal issues related to the attribution of sovereignty over Western Sahara. Asked whether the territory of Western Sahara was *terra nullius* when the Spanish took control, the ICJ answered in the negative. The Court went on to say that neither Morocco nor Mauritania had any sovereign rights over (parts of) Western Sahara's territory.<sup>4</sup> This authoritative legal opinion clarifies the legal situation. However, it did not induce the various contending parties to adopt peaceful procedures to settle the issue of sovereignty over Western Sahara.

On 14 November 1975, Mauritania, Morocco and Spain signed a secret agreement, the Madrid Accords, according to which the territory of Western Sahara was to be divided into two: the northern part was to be annexed by Morocco and the southern part by Mauritania.<sup>5</sup>

On 26 February 1976, Spanish control over Western Sahara came to an end. The following day, the Sahrawi Arab Democratic Republic (*République arabe sahraouie démocratique* – RASD) was proclaimed by the Polisario Front. But the Sahrawi people did not gain their independence, and no sovereign state of Western Sahara was born. Instead, Spain's ill-prepared departure from that barren stretch of the Sahara Desert promptly sparked a conflict which, more than 25 years later, remains unresolved. While Morocco had already started to invade Western Sahara in November 1975 (the so-called 'Green March'), in the wake of the Madrid Agreement Moroccan military forces took control of the entire territory. A guerrilla war between the Moroccan Armed Forces and Polisario-led Sahrawi fighters ensued. In the early phase of the conflict, Algerian soldiers were also engaged in the fighting. In 1979 Mauritania gave up its claim and withdrew from the southern part of Western Sahara.

## 2. THE CONFLICT

The past two decades have been characterized by frequent and sometimes severe clashes between the Moroccan armed forces and the Polisario Front. The latter adopted a hit-and-run strategy, which was fully adapted to the desert conditions. Hundreds were taken prisoner on both sides. In January 1976, a first group of civilian inhabitants fled Western Sahara and found refuge in neighbouring Algeria. Others followed in later years.

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3. UNGA Res. 3292 (XXIX), 13 December 1974.

4. Western Sahara, Advisory Opinion of 16 October 1975, *ICJ Rep.* 1975.

5. Declaration of Principles on Western Sahara by Spain, Morocco and Mauritania, Madrid, 14 November 1975 ('Madrid Accords'), <<http://www.wsahara.net/maccords.html>>.

In view of the intractable situation, international bodies had to intervene and find a way out of the conflict. In 1980 the United Nations General Assembly reaffirmed the right of the Sahrawi people to self-determination and invited Morocco to participate in the search for a viable solution to the problem.<sup>6</sup> The following year, at the 18th Summit of the Organization of African Unity (OAU), the King of Morocco accepted the idea of a referendum in Western Sahara. In 1985 the UN Secretary-General, in cooperation with OAU, sent a first good offices mission to the region. On 20 June 1990 the Secretary-General submitted to the Security Council a report containing proposals for a settlement of the conflict<sup>7</sup> and, on 29 April 1991, the Council decided to establish the United Nations Mission for the Referendum in Western Sahara (MINURSO).<sup>8</sup> MINURSO's role was to assist the Special Representative of the UN Secretary-General in his task of organizing a referendum for the Sahrawis to decide on their future: independence or integration with Morocco. In particular, the UN body had to monitor respect for the ceasefire.

A ceasefire brokered by the UN Special Representative came into effect on 6 September 1991 and has generally been maintained until now, with a few exceptions. The referendum was scheduled to take place in January 1992, but never materialized. The main stumbling block has always been the question of who has the right to participate in the vote on self-determination. So, at the end of 2003, the situation was still basically the same as ten – or even 20 – years ago. MINURSO is still deployed in Western Sahara, the UN Special Representative is still trying to find an accommodation on the contentious issues and the Security Council keeps appealing to the parties concerned to accept a peaceful solution to the conflict.<sup>9</sup> The Security Council does not consider taking action under Chapter VII of the UN Charter in order to impose a settlement on the reluctant parties to the age-old conflict.

### 3. HUMANITARIAN CONCERNS

The Western Sahara conflict has given rise to three major humanitarian concerns and continues to do so:

- the plight of the Sahrawi civilians living in refugee camps on Algerian territory;
- the situation of prisoners held by both parties to the conflict; and
- the whereabouts of missing persons.

In accordance with its mandate, the International Committee of the Red Cross (ICRC) offered its services to the two (originally three) parties to the armed con-

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6. A/RES/35/19, 11 November 1980: Question of Western Sahara.

7. UN Doc. S/21360, 20 June 1990.

8. SC Res. 690 (1991). See the MINURSO website: <<http://www.un.org/Depts/dpko/missions/minurso/index.html>>.

9. The latest pertinent documents are: Report of the Secretary-General on the situation concerning Western Sahara, UN Doc. S/2003/565, 23 May 2003, and SC Res. 1495 (2003), 31 July 2003. See also the list of all Security Council resolutions at the MINURSO website, *ibid.*, James A. Baker III, the former US Secretary of State, is the present Personal Envoy of the Secretary-General.

flict at the end of 1975. The ICRC expressed particular concern for the plight of the prisoners. But it also organized medical and food aid for the Sahrawi population in Western Sahara itself and in Algeria.

### 3.1 **Civilians in refugee camps**

To date, some 165,000 Sahrawi refugees are housed in camps on Algerian territory, close to the Saharan town of Tindouf.<sup>10</sup> Their living conditions are harsh, as the camps were set up in desert areas. The UN High Commissioner for Refugees and the World Food Programme are responsible for assistance to the refugees, with the help of a considerable number of non-governmental organizations, including the Sahrawi Red Crescent.<sup>11</sup>

### 3.2 **Prisoners**

The frequent clashes between the Moroccan Armed Forces and the Polisario fighters resulted in many prisoners on both sides. Captured Moroccan soldiers were taken to the Polisario Front's bases in western Algeria, whereas Morocco held captured Sahrawis in detention centres in Western Sahara. The Sahrawis were the first to consent to the ICRC's request to visit the prisoners, and towards the end of 1975 ICRC delegates for the first time visited Moroccan and Mauritanian prisoners in the hands of the Polisario Front. Morocco subsequently authorized the ICRC to see 99 Algerian prisoners captured by its Armed Forces. In April 1978 the ICRC received permission to see Polisario fighters held by Morocco, but it was not allowed to continue the visits on a regular basis. The ICRC, however, saw at regular intervals the Moroccan prisoners held by the Sahrawis.

In the years that followed, the ICRC attempted not only to get to see the prisoners in their camps but also to arrange for their repatriation. In 1987, under ICRC auspices, captured Algerian soldiers were released by Morocco and Moroccan soldiers were simultaneously sent home by the Polisario Front. For some of them, captivity had lasted more than 12 years. Subsequently, several repatriations of Moroccan prisoners took place. The most recent were on 7 July 2002, 26 February and 1 September 2003 when 101, 100 and 243 soldiers and civilians respectively were allowed to return home, some of them after more than 20 years in captivity. The difficulties encountered in negotiations for the prisoners' return to their respective countries bear witness to the extent to which political considerations can take precedence over the fate of human beings.

According to ICRC sources, 914 Moroccan soldiers were still held captive by the Polisario Front in September 2003; over half of them have been held for more than 20 years.<sup>12</sup> Morocco has declared that it has repatriated all Sahrawi prisoners. The Security Council has repeatedly appealed to both parties to the conflict, and

10. Figures according to estimates by the Algerian authorities (source: UNHCR).

11. The 'Sahrawi Red Crescent' does not fulfil the conditions for membership in the International Red Cross and Red Crescent Movement, as there is no sovereign state behind it.

12. ICRC Communication to the press 03/62, 1 September 2003.

later to the Polisario Front only, to release all persons taken prisoner during the conflict.<sup>13</sup>

### 3.3 Missing persons

The search for persons unaccounted for has been, and still is, one of the foremost concerns of the ICRC and the United Nations Envoy. Security Council Resolution 1429 (2002) again called upon Morocco and the Polisario Front to cooperate with the ICRC to resolve the fate of all persons missing since the beginning of the conflict. Nobody has a clear picture of the number of persons unaccounted for. The ICRC's activities in the unsettled Western Sahara conflict are now mainly concerned with the search for missing persons.

## 4. LEGAL CONSIDERATIONS

In its Advisory Opinion of 1975, the ICJ did not examine the legal nature of the armed conflict being fought in Western Sahara, as it had not been asked to do so. Nor did the various Security Council Resolutions or the Reports of the UN Secretary-General. Yet there can be hardly any doubt that the Moroccan Armed Forces did indeed invade Western Sahara and that the territory has been under Moroccan control and administration ever 1976. This constitutes an occupation of foreign territory. International humanitarian law therefore applies, in particular the (Fourth) Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, with its chapter on occupied territories. These rules safeguard the rights of persons living in an occupied territory, and in particular the rights of persons detained for whatever reason by the occupying power.

Members of the Moroccan Armed Forces captured by the Polisario Front are under the protection of the Geneva Conventions, and so are Sahrawis, whether military or civilian, held by Morocco. Are captured members of the Armed Forces prisoners of war in the technical sense of the word? The answer depends on how the conflict between Morocco and the Polisario Front is categorized: is it an international or a non-international armed conflict? The Polisario Front claims to act in the name of the Sahrawi Arab Democratic Republic. Though a member of the Organization of African Unity, the said Republic has not been generally recognized as a sovereign state. It is not a member of the United Nations. Thus, it cannot be party to an international armed conflict, and the legal regime governing POWs does not apply to prisoners taken during the Western Sahara conflict. However, parties to such a conflict are not only free to apply the more favourable rules relating to international armed conflict, they are also strongly urged to do so.

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13. SC Res. 1495 (2003), 31 July 2003, contains the most recent appeal.

## 5. FINAL REMARKS

The Western Sahara conflict is one of those forgotten conflicts which tend to smoulder on interminably without any control. The Sahrawis are a forgotten people. Hardly any interest is aroused today by their struggle for self-determination and for decent living conditions of their own choice. Apart from the relevant international organizations, nobody seems to care any more about the victims of this conflict. It is high time to find a peaceful solution for a dispute whose parameters are well-defined.