

The Cross-border Governance of Western Sahara

Phillip Gresham

April 15, 2011

ABSTRACT — The decades-long struggle of the separatist Polisario organization in Western Sahara has resulted in one of the largest man-made border demarcations in the world representing a significant diversion of Moroccan monetary and social capital, ubiquitous military and peacekeeping presence, and increasing international pressure to resolve the situation diplomatically. Morocco's strict reaction toward (perceived) treasonous acts—including organizational activities in favor of autonomy such as distributing flyers or congregating, or even the legal registration of sympathetic human rights NGOs in the province—prevents the pro-independence Sahrawi from developing momentum. However, recent fiscal injections and reduced oppression by the ruling government have brought the territory's human rights and development levels on par with Morocco's northern region, diminishing Sahrawi "saber-rattling" and shifting the local opinion from want of statehood to that of increased autonomy and a regional identity. While in the public eye it would appear the decision is left up to Moroccan and Sahrawi leadership, a few interested states formulate shared "strategic planning" behind the scenes (evidenced by leaked and declassified documents) to encourage democratic reform through selective incentives, suggesting a paternalistic relationship similar to Hardt and Negri's Empire, with Spain at the head. A successful resolution of this conflict—strongly desired by the UN, USA, France, ex-colonizer Spain, and neighboring states—would free up a large proportion of Morocco's GDP spent on placing the military at the "berm", ease cross-relations within a number of Mediterranean states, negate the extension of a UN peacekeeping mission, and improve the human rights status of the region as a whole.

On the northwestern edge of the continent lies Africa's last remaining decolonized territory (United Nations, 2010), the Western Sahara, 85% of which is occupied *de jure* by Spain but *de facto* by Morocco, with the remaining 15% controlled by the Polisario Front nationalist movement. As a "non-self-governing territory", the Western Sahara conflict presents an interesting case in the study of cross-border governance, wherein governance must necessarily come from elsewhere. While Spain has unsuccessfully¹ tried to remove itself from the equation, claiming it has ceased any administrative presence in the disputed territory, the conflict remains between the Polisario Front on the one hand, which aims to free Western Sahara from the rule of first Spain and now Morocco and which has the support of many surrounding states, and Morocco on the other hand, which has set up one of the largest man-made barriers in recent history in an effort to annex this portion of valuable resources.

The history of Western Sahara and its residents, the Sahrawi, begins with the so-called "scramble for Africa", the division of the continent by the 19th century colonial powers. The cutting-up of African lands into artificial units resulted in dividing ethnic and cultural communities and bringing together diverse (and sometimes conflicted) peoples under an invented nationalist identity (Shah, 2010), and this process definitely included Moroccan territories. Morocco was until 1975 under Spanish rule and occupation and as a result of the seemingly-arbitrary boundary implemented in the Berlin Conference included the then-named Spanish Sahara. In that year, a request for an opinion by the International Court of Justice put forth by Morocco via the UN General Assembly resulted in a backfire: the Court ruled that, given the evidence that Western Sahara had had legal ties to both Morocco and Mauritania at the time of colonization but was under the sovereignty of neither (International Court of Justice, 1975). Furthermore, the Court found that "the emirates and tribes did not constitute a State" nor a "nation" or a "people":

The information before the Court discloses that, while there existed among them many ties of a racial, linguistic, religious, cultural and economic nature, the emirates and many of the tribes in the entity were independent in relation to one another; they had no common institutions or organs.

However, while the people in the territory did not form a valid allegiance, the land they occupied also did not form a *terra nullius*, which would give either state the opportunity to claim it as a frontier. Adding to the disarray, the Court opined that

...the two States both stated at the end of the proceedings that there was a north appertaining to Morocco and a south appertaining to Mauritania without any geographical void in between, but with some overlapping as a result of the intersection of nomadic routes. The Court confines itself to noting that this geographical overlapping indicates the difficulty of disentangling the various relationships existing in the Western Sahara region at the time of colonization.

Thus, the international community found that the territory known as Western Sahara, which constituted a number of unalloyed tribes, was historically separate from both Morocco and Mauritania and disavowed claims of annexation to either country. Spain, wishing to remove its image as a protracted colonizing power, signed the Madrid Accords shortly after the delivery of the ICJ opinion, a weak retreat that the UN's Legal Affairs office wrote, "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" (Corell, 2002, p. 2). Obviously, the government of Morocco was unhappy with that decision (having proposed it on the floor of the General Assembly) and on 6 November of that year 350,000 Moroccans stormed the city of Tarfaya

¹ UN General Assembly Resolution 34/37 and UN General Assembly Resolution 35/19

demanding the “reclamation” of the territory in a move known as the Green March (Mundy, 2006). The Polisario Front, whose mission was founded two years earlier on the principle of self-determination for the territory and which not a part of the Madrid Accords, was then pitted against the annexation wishes of both Morocco and Mauritania. Mauritania signed a peace agreement with the Polisario Front and withdrew in 1979, when Morocco promptly annexed the territory in August (British Broadcasting Corporation, 2010) and the two parties have engaged in sporadic armed clashes until a cease-fire in 1991 began by the establishment of the peacekeeping UN Mission des Nations Unies pour l'Organisation d'un Référendum au Sahara Occidental (MINURSO; United Nations, 1991). Many Sahrawis fled to refugee camps in southern Algeria after the conflict began where they remain to this day (Shelley, 2004). Algeria’s open-armed treatment of the displaced Sahrawi has severely affected relations between the two states (Mattar, 2004) but Algeria’s continued backing in the realm of international politics has given the Polisario much more power than their guerilla war (Durch, 1993).

The skirmishes have resulted in the building of a giant berm of sand in successive portions, pocketing Polisario-held land to 15% of the eastern portion of the territory (also the least-economically viable). The 2,700 km boundary, known variously as the “Moroccan Wall”, “Wall of Shame” or simply “The Berm”, features many Moroccan-side bunkers, listening posts, checkpoints, and reinforcement positions for a military deployment equal to the number of people living in the Free Zones east of it, and features the longest uninterrupted minefield in the world (McCoull, 2008). The expenditures required for such a massive military presence represents a significant burden on the Moroccan economy (Mattar, 2004) with one estimate putting the figure at 15% of government expenditure² (Shelley, 2004, p. 53). MINURSO’s 1991 Security Council language called for “a just and lasting solution of the question of Western Sahara” and the implementation of a referendum conducted in the territory to result in either a vote of inclusion into the Kingdom of Morocco or that of self-determination of the “people of Western Sahara” (it seems the international community had, since the ICJ’s opinion, amalgamated the once-diverse and independent “peoples” into a single nation under the flag of the Polisario Front). A third option added later of autonomy under the Moroccan flag is currently viewed as the most likely outcome of a vote (Jackson, 2009). However, the referendum process, planned to occur within 16 months of MINURSO mediation, was never carried out due to constant disagreements over who is eligible and required to vote. Toby Shelley (2004, pp. 86-87) concludes that the current factor holding up the referendum is

...the stipulation that the final decision on the long-term future of the territory would be taken by residents rather than indigenes. For supporters of independence this is wholly unacceptable because it turns the referendum process on its head. For all the confusion caused by population movements, omission, incomplete data and the passage of time, not to mention deliberate obfuscation, using 1974 Spanish census data as the basis of an electoral register, as agreed by the parties in 1991, was clearly an attempt to ensure that it was Sahrawis alone who decided the fate of the Western Sahara.

By including all residents of the territory, including recently-relocated persons and ethnically non-Sahrawis, the current plan would allow the opinion of the minority independence movement to be crushed under referendum.

Beyond the legal stalemate created by the referendum plans, the current situation shows that support for full independence is also waning in the face of increased development aid pushed by the Kingdom toward Western Sahara. In a classified diplomatic cable from the US Embassy in Rabat,

² To compare, the United States, as the number-one military spender, spent just over 4% of its income on defense in 2005 (World Factbook, 2011).

(released by Wikileaks in 2010), chargé d'affaires Jackson notes that the US\$2.7 billion Morocco spends annually on the region (including its military deployment) has resulted in “higher levels of urban development than in comparably sized cities in Morocco proper and made the capital, Laayoune, the first city without any shantytowns. Social indicators such as access to and level of education and availability of health care and social facilities exceed Moroccan norms and far surpass those in comparably sized Morocco’s cities.” Furthermore, the human rights situation has dramatically improved since the “years of lead” to a level nearly equivalent to that of Morocco proper, even if pro-Polisario groups and NGOs are unable to find a legal basis for existence. The development of a democratic structure wherein dissidents can publicly voice their opinion is seen as a primary objective for the US mission in Rabat (Jackson, 2009).

In reading the history of Western Sahara, as in the history of the Palestinian national movement (see Farah, 2009), we can see a prisoner’s dilemma unfold, wherein Morocco’s wisest decision would be to form concordances with the Polisario (and thus with Algeria), freeing up a significant portion of its GDP, at the expense of exclusive rule of the territory and loss of face (which is even debatable). Similarly, the Polisario could come to terms that the people want autonomy more than outright independence and agree to the terms of the referendum. Either of these changes in attitude would be looked upon favorably by a number of states and organizations, including the United Nations, which has deployed peacekeepers at an expense of US\$40M a year; the United States, which has been accused by some historians of conspiring to ignite the early conflict—or purposely ignoring their possible role—and forcing the UN to take the responsibility of mediator (Mundy, 2006); Spain, which is, according to the UN, still the colonial power in Western Sahara, and which would appreciate losing that title; Algeria, whose strained diplomatic relations with Morocco are preventing a more united Maghreb and who the US government considers the key to solving the conflict (Jackson, 2009). (Indeed, according to Jackson, “The international community is ready to support Maghreb rapprochement and integration, which can only occur in parallel with a settlement of the longstanding dispute over Western Sahara and resettlement of the long-suffering refugees.”). There is very little that can occur until one of the three major actors (Morocco, Algeria and the Polisario Front) make a move in a different direction and despite appeasement performances by and between all the entities listed above, none of the three wish to make the first step.

From here we must become acquainted to the literature of Hardt and Negri. Their (2001) book, entitled *Empire*, marks its point of departure by explain that there has been a meaningful and significant shift in the terms of international law, moving from individual, multilateral treaties towards the construction of a supranational power exerting its absorbed sovereignty over nation-states. Here they bring up the birth of the United Nations, the supranational entity they propose has, at once, given blessings upon the claims of internal sovereignty to every state worldwide and claimed some of that sovereignty in the right to enforce the former. By this they mean the fact that “supranational law powerfully overdetermines domestic law” (p. 17), as well as being able to judge the right of *bellum justum* and reserve the right to intervene in cases of (presumably) unjust war. The UN with these powers, claim the authors, is part of the Empire upon which their hardy book is named; the UN is a form of “‘governance without government’...at all times perceptible but always and increasingly effective, that sweeps all actors within the order of the whole” (p. 14), which accords “supranational subjects not by right but by consensus” (p. 18). Gone are the days when the international community was swayed to confer right by the arguments of external parties; today, the opinion of a few strong members in the international community (especially those with veto power) dictate the direction of the world order.

Focusing on the UN as a symptom of Empire allows us to question the relevance of Hardt and Negri’s thesis in the case of Western Sahara. It seems that over the span of almost 20 years of MINURSO, the extraordinary power given to the UN and described by these authors has diminished

in weight. One would assume that the delegates of nations sitting within the halls of the General Assembly and Security Council would be able to solve the impasse put before them, which on many levels represents the responsibilities of the Charter. To be sure, the UN, through MINURSO, has itself toiled in safely removing or marking landmines and trained Polisario engineers in ordnance-disposal (McCoull, 2008); it has encouraged the type of increased humanitarian treatment that gained the praise of chargé d'affaires Jackson above; and it has presented, through the ICJ, a fair case to the advancement of an independent Polisario state if enacted. These are actions and intentions of the breadth and depth of which is expected of the kind of Empire in Hardt and Negri's tome, and yet the notion remains that this power fades over time. Whether it is in exasperation, under pressure to downsize from particular influential states, or powerlessness itself, the UN's Mission has thus far failed.

Perhaps one of the greatest criticisms of MINURSO's failure is its noted absence of a human-rights monitoring clause; according to Human Rights Watch, "MINURSO is nearly the only peacekeeping unit under UN auspices that has no human rights monitoring component" (Whitson & Crawshaw, 2009). The lack of such a component dramatically affects the outcome of the mission's efficacy in resolving the situation. Conceivably, with additional (up-to-par) human rights, the Polisario movement would have been able to gain more supporters through grassroots organization; instead, for example, the raising of the Front's ambitions or even its flag outside the Free Zones is illegal and sympathetic NGOs are refused legal entry. The right to a fair vote, withheld from the constituency for some time now over undemocratic demands, could be seen as a human right, and the UN's powerlessness in implementing the terms of the vote could be a condition of its malfunction.

Another possibility that determined the effectiveness of the Mission is the uneven distribution of influence within the UN itself. Since MINURSO fell under the auspices of the UN Security Council, the permanent members with vetoing power could present ideas conducive to their own agendas rather than performing what could otherwise be a capable intervention. The recordings of the Ford Administration during the crisis in 1975 reveal that the most the US was willing to do to help the situation in Western Sahara (i.e. help Spain and Morocco, not the Polisario Front) was affect the conflict from within the UN. Mundy (2006) writes of the conspiracy:

Unfortunately for [the Secretary of State, Henry] Kissinger, the UN was unable to hold a "rigged" vote during the tripartite transitional administration, which saw half the indigenous population flee into the desert before Spain's withdrawal in February 1976. Denied ballot box, the Polisario attempted to achieve self-determination through the gun.

The notion that an individual state—even one sitting permanently on the Security Council—could "rig" a General Assembly vote seems entirely counter to the unilateral power imagined in Hardt and Negri's Empire. Recently, it seems the US government wishes to downgrade the level of deployment of MINURSO (Riley, 2006), and it will be interesting to see if the UN pulls in its favor, but in the meantime, the US's "neutral" position remains a hindrance to solving the conflict. Mundy (2006) writes,

The only difference between 1975 and 2005 is the justificatory geo-political context, from cold war to war on terror, where we are led to believe that our avowed neutrality is a luxury we cannot yet afford. But the persistence of the Western Sahara conflict demonstrates the shortcomings of US's "neutral" Saharan policy. Not that Washington has realised this in the past 30 years.

Durch (1993) agrees that the US's position in the matter may have been the leading cause for MINURSO's defeat. He reviews UN peacekeeping missions and concludes that no mission has been

successful without “strong and sustained great power support, especially the support of the United States” (p. 169). The geopolitical situation, including who was friends with whom at the start of the conflict, may have created a stalemate situation for the US.

Spain’s renewed interest in the territory seems to be self-serving as well as hypocritical. Taking advantage of their formal “ownership” of Western Sahara, and wishing to tighten relations with Morocco, the state announced a €200M agreement to facilitate small- and medium-sized enterprises in Morocco (proper) which aims to replace narcotics growth with tobacco; the Spanish ambassador to the US also remarked to the US ambassador to Morocco that over two-thirds of Spanish aid was sent to the northern part of the country (Riley, 2006). Despite these appearances, however, Spanish interest in the territory “starts at the top” with the King and Queen corresponding with the Polisario Front and visiting in 2007 (Shumake, 2006), giving an air of dismissal to the UN’s reaffirmation of its colonizing status and also doubt that an independence movement is feasible (Aguirre, 2008).

Obviously, the outcome of the success of a United Nations mission has many factors, compounded exponentially when the lifetime, such as that of MINURSO, stretches into decennia, and so it is impossible to point to a single aspect for the entirety’s failure. Age-old rivalries between states, preconditions of agreement set in vicious cycles, and regional geopolitics in general can be part of the equation. We can, however, pick apart what factors of the UN, using the Western Saharan conflict as a case study, disavow the notion of Empire. Indeed, the UN-as-Empire lacks the strong right to intervention heralded by the two authors (or perhaps lacks the strength in this case only?), is still subject to internal politics and is influenced by key members, and has no power to chide when a member takes advantage of a previously-negative connection. As mentioned before, these are only a few of the many factors that could play a role in the outcome of MINURSO. As so many authors in the literature of this conflict ominously end their works: The conflict is in progress to this day.

References

- AGUIRRE, E. J. (2008). Scenesetter for June 8-11 Visit to Spain of Commander, U.S. Africa Command. *Wikileaks Cable 08MADRID620*. Wikileaks.
- BRITISH BROADCASTING CORPORATION. (2010, 10 April 2011). Mauritania timeline. *BBC News*. from http://news.bbc.co.uk/2/hi/middle_east/country_profiles/2483315.stm
- CORELL, H. (2002). *Letter dated 29 January 2002 from the Under-Secretary-General for Legal Affairs, the Legal Counsel, addressed to the President of the Security Council* United Nations Security Council.
- DURCH, W. J. (1993). Building on Sand: UN Peacekeeping in the Western Sahara. *International Security*, 17(4), 151-171
- FARAH, R. (2009). Refugee Camps in the Palestinian and Sahrawi National Liberation Movements: A Comparative Perspective. *Journal of Palestine Studies*, 38(2), 76-93
- HARDT, M., & NEGRI, A. (2001). *Empire*: Harvard University Press.
- INTERNATIONAL COURT OF JUSTICE. (1975, 16 October). Summary of the Summary of the Advisory Opinion of 16 October 1975 - Western Sahara. from <http://www.icj-cij.org/docket/index.php?sum=323&code=sa&p1=3&p2=4&case=61&k=69&p3=5>
- JACKSON, R. P. (2009). Western Sahara Realities. *Wikileaks Cable 09RABAT706*. Wikileaks.
- MATTAR, P. (2004). *Encyclopedia of the Modern Middle East & North Africa: D-K*: Macmillan Reference USA.
- MCCOULL, C. (2008, 9 January 2008). Morocco and Western Sahara. *Mine Action Information Center*. from <http://maic.jmu.edu/journal/11.2/profiles/mccoull/mccoull.htm>
- MUNDY, J. (2006, 10 April 2011). Thirty Years of Conflict: How the US and Morocco seized the Spanish Sahara. *Le Monde Diplomatique*. from <http://mondediplo.com/2006/01/12asahara>

- RILEY, T. T. (2006). Spanish Ambassador on Western Sahara, Migration, Islamists. *Wikileaks Cable 06RABAT557*. Wikileaks.
- SHAH, A. (2010, 10 April 2011). Conflicts in Africa—Introduction. from <http://www.globalissues.org/article/84/conflicts-in-africa-introduction#ArtificialBordersCreatedbyImperialEurope>
- SHELLEY, T. (2004). *Endgame in the Western Sahara: What future for Africa's last colony?* London: Zed Books.
- SHUMAKE, J. (2006). Spanish Seek Inclusion in Western Sahara Strategy. *Wikileaks Cable 06MADRID2809*. Wikileaks.
- UNITED NATIONS. (1991, 10 April 2011). The Situation Concerning Western Sahara - S-RES-690(1991) *United Nations Security Council Resolutions*. from [http://www.undemocracy.com/S-RES-690\(1991\)](http://www.undemocracy.com/S-RES-690(1991))
- UNITED NATIONS. (2010, 10 April 2011). Non-Self Governing Territories. *United Nations and Decolonization*. from <http://www.un.org/Depts/dpi/decolonization/trust3.htm>
- WHITSON, S. L., & CRAWSHAW, S. (2009, 10 April 2011). Letter to the UNSC urging human rights monitoring in Western Sahara. *News*. from <http://www.hrw.org/en/news/2009/04/17/letter-unsc-urging-human-rights-monitoring-western-sahara>
- WORLD FACTBOOK. (2011, 10 April 2011). Country Comparison: Military Expenditures. from <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2034rank.html>