

The African Union's Role in Western Sahara's Claim of Independence

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I. INTRODUCTION

What is the Western Sahara?

The Western Sahara is a North African territory which is a former Spanish colony occupied by Morocco. It borders Morocco to the north, Algeria to the east, Mauritania to the southeast and the Atlantic Ocean to the west. The territory is 284,000 square kilometers and is inhabited by the native Saharawi population and Moroccans. The United Nations (UN) and African Union (AU) have been working for a resolution of its political status through a referendum on independence, to be carried out by the UN Mission for the Referendum in Western Sahara (MINURSO), which began in 1991. Because of Western Sahara's unresolved status, the AU recognizes Western Sahara as Africa's last colony. The Western Sahara has been a point of conflict for regional actors, international organizations and great powers, all of which have conflicting positions on Western Sahara's claim of independence.

Importance of the Topic- The right to self-determination

The political status of Western Sahara is an important issue because it highlights the failure of the international community to uphold the fundamental right to self-determination and territorial integrity. Article 2 of the UN Charter prohibits the threat or use of force against the territorial integrity or political independence of any state. Morocco explicitly violated this upon its armed entry and occupation of the Western Sahara territory in 1975 when King Hassan II dismissed the 1975 International Court of Justice (ICJ) ruling¹ on Western Sahara's right to self-determination. One of the fundamental pillars of international law is the principle of self-determination embodied in Article 1 of the UN Charter, which states that all people have the right to freely determine their political status. The UN Declaration on the Granting of Independence to Colonial Countries and Peoples² declares the non-interference in the internal affairs of all States and the respect for the sovereign rights of all peoples and territorial integrity. It calls for immediate steps to be taken in accordance to the will of the people without any reservations. Western Sahara's right to self-determination has been

1 Advisory Opinion of 16 October 1975 (Western Sahara), Judgement, I.C.J. Reports 1975, p.12.

2 United Nations General Assembly, "Resolution 1514 (December 14 1960) Granting of Independence to Colonial Countries and Peoples."

undermined by the conflicting interests of international actors at the expense of the people and their right to freely decide their political status. This opens up larger questions on the integrity of international law and reveals weakness in the ability of international organizations to ensure the fundamental right to self-determination. International organizations must uphold the most basic terms of international law to ensure a basis of mutual respect for the rights of all nations and to establish the foundations for peaceful relations and international stability. Western Sahara's status hinders the social, political and economic development of the nation and has negative consequences for human rights. Externally, the conflict is a hindrance to further political, social, and economic development and security of the North Africa region and limits regional cooperation, for example between nations in the Arab Maghreb Union (UMA).³ Western Sahara's unresolved status has been a point of contention between Algeria and Morocco, due to conflicting historical and territorial ties to the land. Violence between Moroccan military forces and the *Frente Popular para la Liberacion de Saguia el-Hamra y Rio de Oro* (Polisario Front)⁴ threatens civilian safety, and there is potential for the cease-fire to be violated. The Polisario Front was launched as an armed struggle against Spanish colonization in 1973 but continued to fight the occupation of Morocco after Spain left in 1976.⁵ The militarized border wall with landmines threatens the Saharawi's safety, and there are reports of violations of human rights. The Saharawi refugee camps are the second-oldest political refugee camps in the world (after the Palestinian refugee camps in the West Bank), with over 165,000 people living there for nearly 40 years.⁶ If Western Sahara's status remains unresolved, it will continue to destabilize regional security and undermine bilateral relations between African states, regional cooperation blocs and the legitimacy of the African Union. From a political, economic, legal and social perspective, the unresolved status of Western Sahara requires an urgent political solution, given that it remains a neglected conflict.

The African Union's Responsibility to Uphold Western Sahara's Claim of

3 The Arab Maghreb Union comprises Mauritania, Morocco, Algeria, Tunisia and Libya. Laurence Thieux, "Algerian Foreign Policy towards Western Sahara." in *Global, Regional and Local Dimensions of Western Sahara's Protracted Decolonization: when a conflict gets old*. ed. Raquel Ojeda-Garcia, Irene Fernandez-Molina and Victoria Veguilla. (Palgrave Macmillan, 2016) 125.

4 The *Frente Popular para la Liberacion de Saguia el-Hamra y Rio de Oro* will henceforth be abbreviated as: Polisario Front.

5 Under the Madrid Tripartit Accords on February 26, 1976 Spain withdrew from Western Sahara.

6 "Human Rights Situation in Occupied Western Sahara," *SADR Permanent Mission in Ethiopia and African Union*. 2017. <http://www.sadr-emb-au.net/human-rights/>.

Independence

The African Union (AU) has officially recognized the Saharawi Arab Democratic Republic (SADR) since 1984 as the sovereign government of Western Sahara. The AU Constitutive Act promotes core values of pan-African solidarity, defense of national sovereignty, territorial integrity and independence of member states.⁷ Along with more than 80 states that recognize an independent SADR, the AU is committed to finding a political solution and works closely with international actors in the region. This research will fill the gap in the literature on Western Sahara and the AU by highlighting the AU's role as an international organization upholding Western Sahara's claim of independence.

Given the importance of the Western Sahara's unresolved status and the AU's recognition of SADR, what has been the role of the AU in upholding Western Sahara's claim of independence? This research project examines the complex role of the AU in upholding Western Sahara's status among competing political, legal, economic and social interests. In light of the AU's role, the project also investigates how it will be able to work more productively toward assuring a lasting political solution going forward. The project ultimately concludes that the AU's role in upholding Western Sahara's status has been mainly limited to diplomatic efforts to maintain the relevance and importance of Western Sahara's status. These efforts include diplomatic pressure on the UN, taking a legal stance on resource exploitation and human rights and maintaining the importance of Western Sahara's unresolved status on an international level. It also argues that going forward, the AU should reassess its relations with Morocco, support Western Sahara's civil society efforts, and encourage the expansion of the human rights component of the UN mandate.

II. HISTORY AND BACKGROUND

Western Sahara's Colonial Legacy

The territory officially known as Western Sahara has been controlled by Islamic empires, and shifting ethnic subgroups with control over trans-Saharan trade routes from the 11th -17th centuries. The Moroccan dynasty territorial claims notably date back to the rule of the Sharifian and Saadian dynasties, which consolidated religious and political authority over the Saharan African in the 16th-17th centuries.⁸ These empires integrated trans-Saharan

7 African Union. *The Constitutive Act of African Union*. July 11, 2000. <http://www.achpr.org/instruments/au-constitutive-act/>.

8 Anouar Boukharrs and Jacques Roussellier, *Perspectives on Western Sahara: Myths, Nationalisms, and*

networks of trade and integrated socioeconomic, linguistic, intellectual, and communal exchanges over the following centuries, but the region lacked a single political or administrative rule.⁹ Spain declared Western Sahara as a protectorate, known as Spanish Sahara, at the 1884 Berlin Conference on the basis of agreements between the King of Spain and the chiefs of nomadic tribes living in the territory. The Saharawi tribes living in Western Sahara before Spanish colonization were trans-Saharan nomadic populations that moved between Morocco, Mauritania and Algeria. On October 16, 1975, ICJ ruling established that at the time of Spanish colonization, Morocco's claims to the land provided an indication of existing legal ties of allegiance between certain nomadic tribes and the Sultan of Morocco, rather than establishing legal ties of territorial sovereignty. Morocco presented treaties¹⁰ of international recognition of its sovereignty over Western Sahara but they were not sufficient to claim the territory. Morocco claimed “immemorial possession” and “geographical continuity” with Western Sahara from the seventh century AD and claimed indirect sovereignty over the territory on the basis of religious allegiances between some nomadic populations and the Sultan of Morocco.¹¹ Morocco concluded that its internal displays of sovereignty were linked by common ethnological, cultural and religious ties that had been severed by European colonization.¹² The ICJ ruling concluded that neither Morocco nor Mauritania, which claimed to have cultural, historical and linguistic ties to the territory, were sufficient in their claims to establish territorial sovereignty over Western Sahara, and called for the decolonization process in accordance with the UN General Assembly resolution 1514¹³ on decolonization and the principle of self-determination. In violation of the 1975 ICJ ruling, King Hassan of Morocco ordered the “Green March”¹⁴ into Western Sahara to claim the territory. This initiated, on October 31, 1975, the beginnings of a war between Moroccan forces and the Polisario Front, in response to Moroccan troops crossing into Western Sahara

Geopolitics. (Rowman & Littlefield, UK: 2014), 9.

9 Ibid.

10 The 1975 ICJ Advisory Opinion states that Morocco presented treaties concluded with Spain, the United States and Great Britain between 1767 and 1861 and bilateral treaties in which Great Britain, Spain, France and Germany were said to have recognized that Moroccan sovereignty extended into part of Western Sahara.

11 Zunes, Stephen, and Jacob Mundy. *Western Sahara: War, Nationalism, and Conflict Irresolution*. Syracuse, New York: Syracuse University Press, 2010.

12 Zunes and Mundy, *Western Sahara*, 107.

13 United Nations General Assembly, Resolution 1514, “Granting of Independence to Colonial Countries and Peoples,” December 14 1960.

14 Largely a symbolic implication of claiming the territory, the Green March was on November 6 1975 when 350,000 Moroccans marched across the border into Western Sahara which lasted three days.

where they were met with resistance from Polisario guerillas¹⁵ fighting for Western Sahara's independence. Morocco and Mauritania agreed to assist in decolonization in collaboration with the Saharawi people under the Madrid Accords of November 14, 1975, made with Spain. The Madrid Accords gave Spain time to withdraw from Western Sahara, but Mauritania and Morocco violated the agreement when they remained in the territory after Spain's exit. Polisario defeated Mauritania militarily in 1979, and Mauritania consequently gave up its claim to the territory. Mauritania now recognizes SADR as the legitimate government of Western Sahara. The fighting between Polisario and Morocco continued until a stalemate in 1988. Since then, the conflict took on new dimensions within a regional and an international context, with increased involvement by foreign interests and international organizations.

Western Sahara's Status as a Regional Conflict

Western Sahara's unresolved status acts as a regional conflict between Morocco and Algeria and is an impediment to further integration of the Maghreb.¹⁶ The unresolved status of Western Sahara has been central to the territorial issues of both Morocco and Algeria. The colonially inherited borders that separated the French administrations in Morocco, a French protectorate, and Algeria, a French colony, were adjusted numerous times before a final agreement in 1972.¹⁷ During the Algerian war for independence in 1954, Morocco and Algeria, led by the Front Liberation Nationale (FLN), cooperated against the French in agreeing to renegotiate the border agreement. After Algerian independence in 1962, the previously-agreed-upon negotiations were refused by Algeria, marking the start of a war over the disputed border claims overlapping in Western Sahara.¹⁸ Algeria supports Western Sahara's right to self-determination actively with diplomatic support for SADR and humanitarian aid. Algeria provided military support to the Polisario Front during its war against Morocco. Algeria's support of SADR challenges Morocco's violation of territorial border agreements.¹⁹ Morocco occupies the territory because it has historical claims to the region and seeks to protect the concept of "Greater Morocco," which includes Western

15 Zunes and Mundy, *Western Sahara*, 6.

16 Yahia H Zoubir and Karima Benabdallah-Gambier, "Morocco, Western Sahara and the future of the Maghrib" *The Journal of North African Studies*. 9(1), 49-77, August 10, 2006. <https://adelphi-illiad-oclc-org.libproxy.adelphi.edu:2443/illiad/illiad.dll?Action=10&Form=75&Value=95301>.

17 Thieux, *Algerian Foreign Policy*, 124.

18 Ibid., 125.

19 Ibid.

Sahara based on the expanse of its ancient empire.²⁰ Through Morocco and Algeria's territorial disputes the OAU has maintained its stance of respect for colonial borders. In disregard to the multiple military victories in which Morocco has claimed ownership over Algerian territory, the OAU restored colonial borders and upheld the status of Western Sahara in doing so. The regional dynamics are largely influenced by the historical and contemporary role of Great Powers that have political, economic and security interests in a Moroccan-occupied Western Sahara.

Great Powers and Cold War Alignment

The conflict took on international significance in light of the Cold War and the involvement of Great Powers in proxy wars. During the Cold War the Polisario Front received support from Algeria and Libya because Polisario's independence efforts were seen as a revolutionary insurgency.²¹ Algeria began supporting the Polisario Liberation Front in 1974 in line with its advocacy for socialism, support for independence movements and nonalignment in the Cold War.²² The Soviet Union maintained trade relations with both Morocco and Algeria during the Cold War and has never officially recognized SADR in an effort to maintain stable relations with Morocco.²³ Morocco was aligned with the U.S. and France, providing Morocco with economic and military support.²⁴ France supported Moroccan interests during the Cold War because it was the colonial power in Morocco and maintained diplomatic relations with the country. France has been the only third party to intervene militarily in the Western Sahara conflict; it did so in 1977 to support Morocco.²⁵ Saudi Arabia sided with Morocco and supported it militarily and economically as a way to counter Soviet influence in North Africa. Morocco labeled Polisario as a Communist revolutionary group fighting on behalf of Algerian geopolitical interests as a strategy to legitimize U.S. and French military and economic support for Morocco's involvement in Western Sahara.²⁶ In the 1980s, U.S. military financing was used to build a defensive sand wall with land mines, known as “the berm,” which allowed Morocco to keep parts of

20 Greater Morocco is the Moroccan claim to a larger territory, encompassing large parts of western Algeria, a section of northern Mali, all of Mauritania, and Western Sahara. Zunes and Mundy, *Western Sahara*, 36.

21 Jennsen, *War and Insurgency*.

22 Algeria was neither pro-Western nor pro-Soviet.

23 Zunes and Mundy, *Western Sahara*, 41.

24 Jennsen, *War and Insurgency*.

25 Zunes and Mundy, *Western Sahara*.

26 Orellana, Pablo de. *Struggles over Identity in Diplomacy: ‘Commie terrorists’ contra ‘imperialists’ in Western Sahara*. *International Relations*. Vol 29, Issue 4, pp. 477 – 499.

Western Sahara under closer control. U.S. military and economic support for Morocco continues today, with various security and anti-terrorist activities, which resulted from the U.S.-led War on Terror. The role of French and U.S. counter-terrorist operations in the Sahel region has overshadowed a solution on Western Sahara's status and the Saharawi nationalist movement.²⁷

Economic Interests in Western Sahara

Western Sahara's phosphate reserves, fisheries²⁸ and gas are a fundamental part of Morocco's economy. Morocco's phosphate industry is one of the largest in the world, accounting for more than 72% of all phosphate rock reserves in the world, with about 10% of Morocco's phosphate income coming from Western Saharan mines.²⁹ In 2013, 2.2 million tons of phosphate rock worth \$333 million were transported out of Western Sahara. The U.S. plans to invest \$2.45 billion in Morocco's national phosphate industry (OCP) from 2012-2030.³⁰ Morocco issued \$107 million in oil licenses in 2013 to corporations importing oil to the U.S.³¹ to French-, U.K.- and U.S.-based oil companies.³² North Africa is of economic interest also for the European Union, which Morocco supplies with phosphates, gas and agricultural products.³³ Morocco's fishing industry claimed Western Sahara's coastal fishing resources, which account for EU-Morocco fisheries agreements.³⁴ European states support the Moroccan administration of Western Sahara in exchange for the continued access to natural resources.³⁵ Morocco supported Russian activity in Western Sahara's resources and development in exchange for Russian support of Moroccan interests in the UN Security Council.³⁶ The involvement of foreign industry in Western Sahara provokes questions concerning Western Sahara's Non-Self-Governing Territory status in regards to resource

27 Yahia H Zoubir and Karima Benabdallah-Gambier, "Morocco, Western Sahara and the future of the Maghrib" *The Journal of North African Studies*. August 10, 2006.

28 80% of Moroccan fisheries industry takes place in Western Sahara. See WSRW Report, 2013.

29 Alex Kasprak, "The Desert Rock that feeds the World." *The Atlantic*, 2016.
<https://www.theatlantic.com/science/archive/2016/11/the-desert-rock-that-feeds-the-world/508853/>.

30 WSRW Report. "P for Plunder," *Western Sahara Resource Watch*. June 2014.
https://afrika.dk/sites/afrika.dk/files/p_for_plunder_2014_web.pdf.

31 Ibid.

32 Oklahoma based Kerr-Mc-Gee Corporation planned on invested 80 million dollars in 2002. see "New Report: French oil company Total SA in occupied Western Sahara," 2013. <http://www.wsrw.org/a217x2651>.

33 See Black, "Western Sahara's 'Conflict Tomatoes' Highlight a Forgotten Occupation," *The Guardian*, 2015.
<https://www.theguardian.com/world/2015/mar/04/western-sahara-conflict-tomatoes-occupation-morocco-labelling-tax>.

34 Zunes and Mundy, *Western Sahara*, 86.

35 Jennsen, *War and Insurgency*.

36 "Morocco admits to using Saharawi resources for political gain," *Western Sahara Resource Watch*. 2014.

exploitation.³⁷ On February 5, 2002, the UN legal counsel issued an opinion³⁸ explaining that continued exploration and exploitation of resources in Western Sahara without local consent is a violation of international law.³⁹ The UN Security Council backed the position that Morocco's continued involvement in disregard to the Saharawi's interests is a violation of international law.⁴⁰ Morocco maintains a military presence in Western Sahara to ensure its control over the territory and protect its economic investments.⁴¹ It also lobbied some AU member states for political support in exchange for phosphates⁴² to reach Morocco's goal of becoming the world's largest producer of phosphate-based fertilizers by 2017.

International Security Interests in Western Sahara

The alignment of the U.S. and France with Morocco is seen as part of the nations' larger regional security interests in North Africa and the Middle East, which benefit from a strong Western ally in the Maghreb, a region which is seen by the U.S. as a priority in fighting terrorism.⁴³ The U.S. has strong economic and political ties with Morocco and provided the country with military aid⁴⁴ and free-trade agreements to build strategic regional ties.⁴⁵ King Hassan II (1961-1999) and his successor, Mohamed VI, have had strong ties with consecutive U.S. Administrations since the U.S.'s involvement under the Ford administration. During the Cold War, the Carter Administration gave military aid to Morocco amounting to \$250 million in defensive arms in 1980, and tolerated the use of U.S. arms in Western Sahara.⁴⁶ Ronald Reagan maintained strong relations and increased Morocco's development

37 White, Gregory W. 2005. "Free Trade as a Strategic Instrument in the War on Terror?: The 2004 US-Moroccan Free Trade Agreement." *The Middle East Journal* 59 (4): 597-616. <https://search-proquest-com.libproxy.adelphi.edu:2443/docview/218533622?accountid=8204>.

38 United Nations Legal Counsel Opinion. "Western Sahara," February 5, 2002. <http://www.un.org/apps/news/story.asp?NewsID=2806#.W0sAObGZOHo>.

39 Grande-Gascon and Ruiz-Seidedos "Global, Regional and Local Dimensions of Western Sahara's Protracted Decolonization," 85.

40 United Nations Security Council, "Letter dated 29 January 2002 from the Under-Secretary-General for Legal Affairs, the Legal Counsel, addressed to the President of the Security Council." February 12, 2002, S/2002/161. <http://www.arso.org/UNlegaladv.htm>.

41 Around 100,000 soldiers are stationed there, making up for a third of the total Moroccan population present in the territory. See Abderrahmane, Abdelkader. "The Western Sahara and North African People's Power." *ISS*. January 26, 2012. <https://issafrica.org/iss-today/the-western-sahara-and-north-african-peoples-power>.

42 "Morocco's P for Politics in Africa," *WSRW*. March 24, 2017. <http://www.wsrw.org/a105x3788>.

43 Orellana, *Struggles Over Identity in Diplomacy*.

44 The US gave Morocco \$3.53 billion in economic and military aid between 1946 and 2006, receiving more U.S. than any other country in Africa before September 11, 2001. see Zunes and Mundy, *Western Sahara*, 71.

45 White, "Free Trade as a Strategic Instrument in the War on Terror?" 597-616.

46 Morocco violated a Morocco-US agreement concerning the limit of US weaponry to defensive purposes only (US Arms Export control Act), and the prohibited use of US arms outside of Morocco's internationally

aid,⁴⁷ which prolonged Morocco's ability to finance the war with Polisario and helped provide the means for Morocco to walk away from the OAU settlement plans. A UN-OAU peace process during the 1990s was supported by the Bush and Clinton administrations, which saw the U.S. joining the Group of Friends for Western Sahara, support for MINURSO and former U.S. Secretary of State James Baker's appointment in 1997 as UN Special envoy to lead negotiations toward a referendum. U.S. interests in the region shifted after September 11, 2001. President Bush saw King Mohammed VI of Morocco as a crucial ally in the War on Terror. In 2004 Baker's UN referendum plan failed, and Bush increased support for Morocco with the backing of the Autonomy Plan, which proposed to give more regional powers in governance and economic control in Western Sahara until a referendum is held, as "the only realistic solution" showing a pro-Moroccan shift. An independent Western Sahara, from this perspective, would further destabilize the region and create more fragmentation.⁴⁸ President Obama supported the Moroccan Autonomy Plan as a viable solution to Western Sahara's sovereignty. Neither France nor the U.S. has recognized Moroccan sovereignty over Western Sahara or recognized SADR as the legitimate government of Western Sahara. It is likely that the U.S. and France maintain a neutral stance on Western Sahara's status to secure their geopolitical interests.

The Organization of African Union and Western Sahara

In 1976, the Organization of African Union (OAU) began working to negotiate a cease-fire between Polisario and the Moroccan military, but the 1982 admission of SADR into the OAU as an official member state resulted in Morocco's exit from the organization in protest two years later. The OAU was unable to enforce Morocco's participation in negotiations with Polisario, which necessitated the UN's involvement, with Javier Perez de Cuellar as the UN Secretary-General taking on the issue in 1985.⁴⁹ The 1988 OAU Peace Plan outlined a framework to declare a cease-fire, hold a referendum and undertake a humanitarian mission in Western Sahara.⁵⁰ On April 29, 1999 the UN Security Council

recognized borders. Zunes and Mundy, *Western Sahara*, 65.

47 Reagan provided \$100 million in military grants and loans and Morocco development aid was on the rise, even though poor countries aid was on the decline. Zunes and Mundy, *Western Sahara*.

48 Boukhars, *Western Sahara*.

49 Zunes and Mundy, *Western Sahara*, 179.

50 Ibid.

Resolution⁵¹ finalized a mission, the United Nations Mission for the Referendum in Western Sahara (MINURSO),⁵² to monitor the cease-fire and ensure a referendum. MINURSO has been successful in maintaining a relative level of peace and continuing talks between the actors involved, but has thus far seen more failures in the referendum process than successes. Since the end of military conflict, diplomatic negotiations between Morocco and Polisario are limited in their progress toward a political resolution on the status of Western Sahara. Western Sahara is the only territory out of 17 on the UN list of Non-Self-Governing Territories⁵³ that lacks an uncontested administering power,⁵⁴ as Spain has been exempt from any international responsibility in this regard since 1976. Western Sahara's unresolved status raises important questions with regard to the right of humanitarian involvement, which is largely self-management by the Saharawi refugee population,⁵⁵ and resource exploitation by international actors, which profit from the unresolved status of Western Sahara. The Saharawi independence movement led by Polisario continues to advocate for their right to self-determination.

The United Nations Involvement and MINURSO Mission

The OAU initiated the plans for a referendum during the 19th Ordinary Session of the OAU Summit (June 6-12, 1983), which was pursued together with the UN in 1985 and led by the UN Secretary-General Javier Perez de Cuellar.⁵⁶ On April 29, 1991, UN Resolution 690 established MINURSO to supervise the cease-fire and organize a referendum for the Saharawi people to choose between independence and integration with Morocco. MINURSO's budget was scaled down from the start with the removal of refugee components due to the UN's involvement in the Middle East after the Gulf War.⁵⁷ MINURSO's implementation of a cease-fire and referendum was compromised by disagreements between

51 United Nations Security Council, "Resolution 690 (April 29, 1991) The Situation Concerning Western Sahara." (S/RES/690), <https://daccess-ods.un.org/TMP/2080530.97128868.html>.

52 *Mission des Nations Unies pour l'Organisation d'un Referendum au Sahara Occidental* is abbreviated as MINURSO.

53 "Non-Self-Governing Territories," The United Nations and Decolonization. <http://www.un.org/en/decolonization/nonselvgovterritories.shtml>.

54 Morocco has never acquired the status of an administering Power of the territory in terms of Article 73 of the UN Charter. AU Legal Opinion, October 15 2015.

55 A generation of more than 165,000 Saharawi refugees has grown up in Tindouf refugee camps in southwestern Algeria. see "The Saharawi Refugee Camps" *SADR Permanent Mission in Ethiopia and African Union*. 2017. <http://www.sadr-emb-au.net/refugee-camps/>.

56 Zunes and Mundy, *Western Sahara*, 179.

57 *Ibid.*, 185.

Morocco and Polisario concerning the identification process for the voter lists needed to carry out the referendum, as well as the escalation of military tensions between Morocco and Polisario in 1991.⁵⁸ On March 17, 1997, the UN's appointment of former US Secretary of State James Baker as Personal Envoy to the Western Sahara started a new round of negotiations, known as Baker Plans I and II, which ultimately failed to implement a referendum.⁵⁹ Following Baker's departure as the Personal Envoy to Western Sahara in 2005, the UN peace process nearly collapsed in 2007 with the introduction of a U.S backed Moroccan Autonomy Plan, a solution for increased regional autonomy over fiscal resources and governance in Western Sahara until a referendum is held.⁶⁰ In March 2016, Morocco reduced MINURSO staff by kicking out 83 members and withdrew its \$3 million annual contribution to the mission in response to UN Secretary-General Ban Ki-moon's use of the word "occupation" in reference to Morocco's role in Western Sahara.⁶¹ MINURSO's budget has decreased since 1991 as a result of limiting the mandate to primarily cease-fire monitoring and peacekeeping services, which stress the importance of human rights, but it lacks a human-rights-monitoring mandate for direct involvement and is limited in scale to the Western Sahara-Morocco border region monitored by MINURSO. On April 29, 2016, MINURSO was renewed for a total of 481 personnel with a budget of \$56,582,500⁶² for the period of July 1, 2016-July 30, 2017.

The permanent members of the UN Security Council, United States, France, China, Russia and the United Kingdom were internally divided in their support for the UN settlement plans. Within the UN Security Council Moroccan interests have been defended by France, shown in their position to block the 2003 Baker Plan for a resolution on a referendum that was unfavorable for Morocco.⁶³ As a result of French and American veto threats, the Security Council has yet to place Western Sahara's territorial claim under Chapter VII of the UN Charter, which would give the international community the power to impose sanctions or other appropriate measures on Morocco so as to force it to abide by the UN

58 Ibid., 188.

59 There have been over 10 rounds of UN-led negotiations since 2009, all of which have ended without meaningful progress.

60 Zunes and Mundy, *Western Sahara*, 122.

61 Hallelujah Lulie, "The Word that reignited the Western Sahara Debate." *ISS*. April 26 2016. <https://issafrica.org/iss-today/the-word-that-reignited-the-western-sahara-debate>.

62 United Nations General Assembly, "Approved Resources for Peacekeeping" (22 June 2016) A/C.5/70/24, http://www.un.org/ga/search/view_doc.asp?symbol=A/C.5/70/24.

63 Zunes and Mundy, *Western Sahara*, 79.

mandates it disregards.⁶⁴ Polisario officials argued that UN membership is denied to them due to the Security Council's control of the Western Sahara issue.⁶⁵ The UN Security Council has nonetheless supported the continued efforts in working toward a resolution. The Group of Friends for Western Sahara (U.K., U.S., France, Russia and Spain) was created to sustain progress and build international support for the negotiations on Western Sahara's status and has been successful in the continued renewal of MINURSO's mandate.⁶⁶ SADR is not a member of the UN because it is not recognized as the administering power of Western Sahara. A number of UN member states recognize SADR, while others have either frozen or withdrawn recognition, or have abstained from taking a position on the issue.

III. THE ROLE OF THE AFRICAN UNION

History of the African Union

The OAU was founded in 1963 consisting of 32 fully independent member states as a response to the post-WWII era of decolonization and the Cold War ideological struggles.⁶⁷ The main objectives and achievements of the OAU are its decolonization efforts and the struggle against Apartheid. The objectives of decolonization were realized with the end of the South African Apartheid in 1994, which renewed a vision of pan-Africanism.⁶⁸ OAU member states pushed for institutional reform in response to the continent-wide social, political and economic changes, which resulted from the post-colonial democratic governance of African countries and their desire for more economic integration and cooperation.⁶⁹ The OAU transitioned into the AU at the 4th Extraordinary Summit on September 9, 1999, with the Sirte Declaration, which amended the OAU Charter with the purpose of increasing its effectiveness and established the African Economic Community.⁷⁰ The AU was launched in 2002 with 52 member states and marked a new phase in African integration, taking on the challenges the OAU was unable to face. The AU seeks to achieve

64 "Stephen Zunes: Testimony before the conference on decolonization." *Sahara Press Service*, 2006.

65 Zunes and Mundy, *Western Sahara*, 124.

66 Dunbar, "Saharan Stasis: Status and Future Prospects of the Western Sahara Conflict."

67 Gasu, John. *The African Union and the Democratic Project; examining the challenges for task accomplishment*. 2013. <http://muse.jhu.edu.libproxy.adelphi.edu:2048/chapter/1029634>.

68 Muchie and Lukhele-Olorunju, *The African Union Ten Years After: Solving African Problems with Pan-Africanism and the African Renaissance*, 2013.

69 Ibid.

70 "Transition from the OAU to the African Union." *African Union*. http://www.au2002.gov.za/docs/background/oau_to_au.htm.

full African integration by deploying African solutions to African problems.⁷¹ The OAU was an intergovernmental organization that suffered from the lack of good governance of its member states.⁷² The AU Constitutive Act set out new objectives to establish democratic principles and encourage popular participation.⁷³ The new approach differs from that of the OAU in that it influences further integration among the member states and departs from the OAU's intergovernmental structure, seen with the creation of the Pan-African Parliament (PAP) and civil society representation as part of its democratizing approach. The AU main institutions include the Assembly, Executive Council, the Permanent Representative Committee, the Peace and Security Council (PSC) and the PAP.⁷⁴ Some of the OAU initiatives were reformed to include more binding agreements and increased cooperation with International Organizations and African civil society. The PSC is an example of an AU institution that follows guidelines for conflict resolution outlined in the African Peace and Security Architecture (APSA) and was put in place for the management and resolution of conflicts.⁷⁵ AU initiatives push for conflict-resolution efforts and cooperation among all member states, which have an important role in grassroots peace-building efforts.⁷⁶ The AU's focus is on diplomacy and the military dimension is largely excluded due to the principle of noninterference, marking a departure from the principles of the OAU.⁷⁷

Background and Recognition of SADR in AU

The AU has kept its firm recognition of Western Sahara's right to self-determination as part of the decolonization process because it highlights the fundamental principles. The AU strives for a continent-wide union, which necessitates the inclusion of SADR because the majority of its member states officially recognize SADR as a legitimate government. SADR is a founding member of the AU and the recognition of its sovereign status signifies many of the AU's fundamental values, including territorial integrity, the respect for colonial borders

71 Ibid.

72 Muchie and Lukhele-Olorunju, *The African Union Ten Years After*.

73 Ibid.

74 Tiekou, "The African Union" in *Responding to Conflict in Africa: The United Nations and Regional Organizations*. May 14, 2013. Boulden, J. Palgrave Macmillan: 34.

75 Gasu, 2013.

76 Olaniyan, Azees. "Panel of the Wise and future of Conflict Resolution in Africa." *The African Union Ten Years After*. Africa Institute of South Africa, October 21, 2013. 105-117.
<http://muse.jhu.edu.libproxy.adelphi.edu:2048/chapter/1029639>.

77 Schmidt, Siegmur. "Through the Lens of European Integration Theory: African Peace and Security Architecture as a Framework in Transition." *Creating an African Security Architecture*. ed. Hany Besada. Ashgate. 2010, 16.

and national sovereignty. The AU stance on Western Sahara's status remains a question of decolonization and upholding international law, in correspondence with the 1975 ICJ ruling and UN Resolutions. The OAU twice elected SADR's president, Mohammed Abdelaziz, as vice president, in 1985 and 1990, indicative of the political support and recognition it receives. The AU recognizes Polisario's liberation struggle and many member states express solidarity with its struggle for independence.⁷⁸

The AU makes diplomatic efforts to guarantee Western Sahara's right to self-determination. The recognition of SADR has been a major point of contention among AU member states and prevented a continent-wide AU up until 2016. Algeria became the first state to recognize SADR in 1976, which prompted Morocco to break off diplomatic relations with Algeria.⁷⁹ Leading up to the official recognition of SADR by the OAU, Morocco led a boycott over SADR's potential admittance into the OAU: 28 member states⁸⁰ backed this boycott, which threatened to break up the OAU.⁸¹ Algerian lobbying for the recognition of SADR in the OAU led to the recognition of its status by 54 countries, and in 1982 SADR was admitted as the 52nd member state,⁸² signifying recognition by the majority of member states. This prompted the withdrawal of Morocco in 1984 from the OAU in protest of its political recognition of Polisario.⁸³ The AU's recognition of Western Sahara's status was strongly condemned by Morocco and 18 other member states, based on the claim that SADR did not yet have full control of its territory.⁸⁴ Morocco's withdrawal from the OAU shifted the Western Sahara peace process to the UN, which took on the pre-existing OAU settlement framework for holding a referendum.⁸⁵ Given the AU's strong stance and support of a referendum, Morocco questioned the partiality of the former AU Commission chairperson,

78 Recognition of Polisario's liberation movement is held by Mozambique, Angola, Guinea-Bissau, Cape Verde, and Namibia.

79 Zunes and Mundy, *Western Sahara*

80 Gabon, Benin, Burkina Faso, Burundi, Cape Verde, Comoros, Congo, Cote d'Ivoire, Djibouti, Eritrea, Gambia, Ghana, Guinea, Guinea Bissau, Equatorial Guinea, Liberia, Libya, Central African Republic, The DRC, Sao Tome, Senegal, Seychelles, Sierra Leone, Somalia, Sudan, Swaziland, Togo, Zambia. (BBC July 18, 2016).

81 Zunes and Mundy, *Western Sahara*, 75.

82 Peace and Security Council, "Resolution on Western Sahara." (AHG/Res103) 27 June 1981. <http://www.peaceau.org/uploads/ahg-res-103-xviii-e.pdf>.

83 Morocco was the only member to do exit the OAU. Whitfield, Teresa. "Self-Determination and Realpolitik: The story of Western Sahara." in *Friends indeed?: The United Nations, Groups of Friends, and the Resolution*. 169.

84 Zunes and Mundy, *Western Sahara*, 177.

85 *Ibid.*, 63.

Nkosazana Dlamini Zuma,⁸⁶ and does not see the AU as neutral with respect to Western Sahara's status. Morocco opposed AU negotiations⁸⁷ and claimed that the AU has no legal basis or moral legitimacy to intervene in the issue that is the exclusive domain of the UN.⁸⁸ For many AU member states the recognition of SADR represents a stance against Morocco's Western-backed violation of self-determination and disrespect for colonially inherited boundaries.⁸⁹ Among the countries against Morocco's readmission were Zimbabwe, Mozambique, South Africa, Namibia, Botswana and Algeria. After Morocco gained support of 39 member states for its readmission, Zimbabwe's president, Robert Mugabe, called out African leaders, saying that they lacked principles and that they took this stance due to donor money.⁹⁰

Morocco's Readmission into the AU

Morocco was readmitted into the AU on January 30, 2016 after a 33-year absence. SADR is currently recognized by over 80 states, but 34 AU member states still do not recognize this status.⁹¹ Prior to the AU vote to readmit Morocco,⁹² Morocco's King Mohammad VI toured African countries seeking support and making bilateral agreements.⁹³ There is a belief that Morocco will contribute needed funding to the AU.⁹⁴ Morocco was

86 Lulie, *Western Sahara Debate*.

87 In protest on 24 April 2016, Morocco sent a letter to the Secretary-General reiterating its “categorical opposition to any role or involvement of the African Union in the question of the Moroccan Sahara.” see “Western Sahara: Arria-formula Meeting, Consultations and MINURSO Adoption.” *Whats in Blue*. April 26, 2016. <http://www.whatsinblue.org/2016/04/western-sahara-arria-formula-meeting-consultations-and-minurso-adoption.php>.

88 Morocco has rejected the AU's appointment of a special envoy of Western Sahara. See El Yaakoubi, Aziz “Morocco Rejects African Union's new Special Envoy for Western Sahara.” July 1, 2014 *Reuters*.<http://af.reuters.com/article/worldNews/idAFKBN0F64Z520140701>.

89 Fabricius, Peter. “Morocco, the AU's Prodigal Son.” *Institute for Security Studies*. (August 4 2016). <https://issafrica.org/iss-today/morocco-the-aus-prodigal-son>.

90 Nyathi, Kitsepile. “Mugabe hits at African Leaders for Morocco Return to AU.” *Daily Nation*. February 1, 2017. <http://www.nation.co.ke/news/africa/Mugabe-hits-at-African-leaders-for-Morocco-return-to-AU/1066-3796250-qb5e2c/index.html>.

91 Zunes and Mundy, *Western Sahara*.

92 Nizar Visram, “Morocco's readmission to AU should have had preconditions; Western Sahara is an albatross on the African Union's conscience.” *Daily News South Africa*. March 3 2017.

93 From 2004-2014 Morocco's trade with the rest of the continent grew by an annual average of 13% (\$3.7 billion). In 2014, 42% of which was with sub-Saharan Africa according to a government report; *Morocco-Africa Relationship: Ambition for a New Frontier*. In 2015 it invested \$600 million, with neighboring Mali getting the majority, followed by Côte d'Ivoire, Burkina Faso, Senegal and Gabon, according to the *World Investment Report 2016*, (UNCTAD). In 2015 Morocco's investment in sub-Saharan Africa represented 85% of its overall foreign direct investment stocks. see “Morocco flexed Economic Muscles and Returned to the AU.” March 2017.

94 Peace and Security Council Report. “A Shaky Start for Morocco in the AU.” *ISS*. April 3 2017. <https://issafrica.org/pscreport/on-the-agenda/a-shaky-start-for-morocco-in-the-au>.

readmitted by a vote of 39 of 54 AU member states. Morocco must accept all 33 Articles of the Constitutive Act as a member state, including the recognition of colonial borders. Although Morocco's readmission into the AU shows signs of hope for reaching a diplomatic and peaceful solution on Western Sahara's status, Morocco did not attend the 668th PSC meeting on the situation in Western Sahara, which violates the provisions of the AU Constitutive Act and the PSC Protocol and further prolongs the conflict.⁹⁵ Morocco has walked out abruptly at AU events⁹⁶ in opposition to SADR's representation. Morocco's actions are denounced by other member states and the PSC,⁹⁷ which strongly condemned Morocco's violations of human rights in Western Sahara and the trial of 25 Saharawi political prisoners.⁹⁸

Legal Stance on Resource Exploitation and Human Rights Involvement

The AU's legal stance on resource exploitation in Western Sahara is a concrete action taken to uphold Western Sahara's territorial integrity. From the Office of the Legal Council and Directorate for Legal Affairs of the AU Commission, legal opinions have been given in the context of relevant UN Resolutions and OAU/AU Decisions pertaining to the actions of Moroccan authorities, foreign companies or any group that has been involved in the exploitation of Western Sahara's resources.⁹⁹ The PAP condemned the actions of a Swiss International Organization,¹⁰⁰ among others meeting in the Western Sahara territory, and appealed to civil society organizations in AU member states to boycott any such event. The PSC takes a clear stance against resource exploitation in the territory, seen in its recommendation for a global boycott of products from companies involved in the illegal exploitation of Western Sahara's natural resources.¹⁰¹ The PSC urged Morocco not to enter

95 Peace and Security Council Communique. 668th Meeting 20 March 2017, PSC/PR/COMM(DCLVIII).

96 On March 31 2016, the Moroccan delegation abruptly left an African Development Week event that was being held in Addis Ababa, Ethiopia. Lulie, *Western Sahara Debate*.

97 "PSC meets without Morocco, AU calls for end of occupation of Western Sahara" *Algeria Press Service*. March 22 2017. <http://en.aps.dz/world/17403-psc-meets-without-morocco,-au-calls-for-end-of-occupation-of-western-sahara>.

98 For more information on the trial and violations, see Amnesty International Report. "Morocco/ Western Sahara 2016/2017." *Amnesty International*. <https://www.amnesty.org/en/countries/middle-east-and-north-africa/morocco/report-morocco/>.

99 African Union Commission Legal Opinion. *The office of the legal counsel and directorate for legal affairs of the African Union Commission*. 2015. https://www.au.int/web/sites/default/files/newsevents/workingdocuments/13174-wd-legal_opinionof-the-auc-legal-counsel-on-the-legality-of-the-exploitation-and-exploration-by-foreign-entities-of-the-natural-resources-of-western-sahara.pdf.

100 The Pan African Parliament, Declaration of 24th Assembly (Saharawi Republic), March 2015.

101 11. Calls on the UN Security Council to address the issue of the illegal exploitation of the Territory's

into contracts on the exploration and exploitation of Western Sahara's natural resources. On January 27, 2012, the AU Executive Council adopted a decision¹⁰² to request the African Commission on Human and Peoples Rights (ACHPR) to carry out a mission in Western Sahara to investigate human rights violations. Due to ACHPR efforts, the Western Sahara's humanitarian needs were included in the AU agenda.¹⁰³ After receiving the legal opinion of the AU Commission and concerns from AU member states, which refute Morocco's actions and back the position of SADR,¹⁰⁴ the UN Economic Commission for Africa upheld the AU's legal findings. Most recently, on 25 March 2017, the PSC called on the ACHPR to undertake a humanitarian mission in Western Sahara.¹⁰⁵ Algeria spoke at the Human Rights Council on behalf of the Geneva Group for Support to Western Sahara and stressed Western Sahara's right to self-determination in the UN Charter.¹⁰⁶ The Algerian Red Crescent gives humanitarian assistance to Western Sahara and Mauritania supports humanitarian efforts as well.

Diplomatic Pressure on the UN

The AU's diplomatic pressure on the UN shows its commitment to finding a resolution on Western Sahara's status in alignment with International Law. The AU Assembly criticized the UN Secretary-General Ban Ki-Moon for postponing his visit to Western Sahara and delaying a peaceful solution to the conflict.¹⁰⁷ The PSC urged support from the international community at the UN and provided updates by the AU Commission and the AU High Representative for Western Sahara. The PSC updates take note on all previous AU

natural resources, bearing in mind the call made in the UN Secretary-General report of 10 April 2014, for all relevant actors, in the light of the increased interest in the natural resources of Western Sahara, to “recognize the principle that the interests of the inhabitants of these territories are paramount”, in accordance with Chapter XI, article 73 of the Charter”. In this respect, Council recommends consideration of a strategy of global boycott of products of companies involved in the illegal exploitation of the natural resources of Western Sahara as a way of further sustaining the attention of the international community on the situation in Western Sahara; (March 7, 2015 *496th Meeting, PSC Decision on the situation in Western Sahara*)

102 African Commission on Human and Peoples' Rights. “Report of SADR” September 24-28 2012. AU Executive Council adopted decision EX.Cl/Dec.689 (XX).

103 “ACHPR gave special attention to the Human Rights situation in occupied Western Sahara.” *SADR Embassy*. February 5, 2015. <http://www.sadr-emb-au.net/achpr-gave-special-attention-to-the-human-rights-situation-in-occupied-western-sahara/>

104 “Morocco once again fails to prevent SADR from participating in AU-UN conference” *Algeria Press Service*. March 27 2017. <http://archives.spsrasd.info/news/en/articles/2017/03/27/8002.html>.

105 Peace and Security Council. “AU Calls on International Community to Support its Efforts to Overcome Current Impasse in Western Sahara,” March 25, 2017 .

106 “Human Rights Council Holds a General Debate on the Follow Up to and Implementation of the Vienna Declaration and Programme of Action.” Geneva: The office of the United Nations news release. March 20 2017.

107 African Union Assembly *Decision 589* , January 30-31 2016. Assembly/AU/Dec.589(XXVI).

decisions on Western Sahara's referendum process and the concerns over the peace process, while also reiterating the call to the UN Security Council and General Assembly to continue progress toward a peaceful referendum in accordance with UN principles.¹⁰⁸ The AU Commission worked to coordinate AU progress with the UN by bringing forward all relevant AU declarations. The AU Assembly reiterated its calls for a resolution to the Western Sahara's undetermined status,¹⁰⁹ pressuring the UN Security Council to assume its responsibly to guarantee self-determination, protect Western Sahara's natural resources and protect human rights. The AU communiqué on the situation in Western Sahara adopted by the PSC on March 27, 2015, was sent to the UN General Assembly Security Council, international stakeholders and the parties involved in Western Sahara to encourage progress toward a peaceful resolution.¹¹⁰ The AU urged the UN to include a human-rights-monitoring mandate in MINURSO, saying that the UN should sustain impartial monitoring of human rights in territory and refugee camps.¹¹¹ As Chairperson of the AU Commission, Dlamini-Zuma urged the UN Secretary-General and international community to continue working toward a solution. She wrote to the Ministers of Foreign Affairs of Algeria and Mauritania, as well as to the UN Security Council permanent members and Spain, to inform them of AU Executive Council decisions concerning Western Sahara. In September 2013 at the UN General Assembly, Dlamini-Zuma discussed the issues with the UN Secretary-General and his personal envoy. On April 26, 2016, before the most recent renewal of MINURSO's mandate, AU Special Envoy Joaquim Chissano met with the UN Security Council and criticized Morocco's decisions to expel MINURSO members, calling this a dangerous precedent. He warned the Security Council that potential violence and the condition of Saharawi refugee camps can have serious consequences and requested that they include the protection of human rights in the mandate of MINURSO, to set a date for the referendum and to denounce the illegal exploitation of natural resources.¹¹²

South Africa is a key ally of SADR through its influence within the UN Security

108 African Union Peace and Security Council Communique, March 20 2017. PSC/PR/COMM(DCLVIII).

109 Assembly of the Union 26th Ordinary Session, January 20 2016. Assembly/AU/Dec.589(XXVI).

110 United Nations General Assembly Security Council 27 April 2015 A/69/861 – S/2015/240

111 African Union Commission Chairperson. "Report of the Chairperson of the commission on the evolution of the peace process in Western Sahara and other related issues." March 27, 2015. <https://www.au.int/web/en/speeches/report-chairperson-commission-evolution-peace-process-western-sahara-and-other-related>.

112 "Joaquim Chissano urges the UN to resolve the Western Sahara conflict." *Sahara Press Service*. April 27, 2016. <http://www.spsrasd.info/news/en/articles/2016/04/27/1313.html>.

Council (2007-2008, 2011-2012), where it worked toward renewing MINURSO and encouraging a resolution between both parties, while also promoting African interests. In the UN Security Council South Africa called for the public release of the report by the Office of the High Commissioner for Human Rights on the humanitarian situation in Western Sahara.¹¹³ South Africa's UN Ambassador, Baso Sangqu, accused the UN Security Council of having double standards concerning the priority of addressing Western Sahara's human rights, and was critical of the fact that there are no African representatives in the Group of Friends on Western Sahara.¹¹⁴ On April 30, 2017 at the UN Security Council's 5669th meeting, South Africa's representative noted that the Resolution implied Morocco's Autonomy Plan was a more credible plan than Polisario's and encouraged the UN Security Council to remain partial to either of the parties.¹¹⁵ At the Special Political and Decolonization Committee, the representative of South Africa to the UN, Dr. Wouter H. Zaayma, expressed his concern over Western Sahara's status as the last colony in Africa and called for the exercise of self-determination in accordance with UN Resolution 1514.¹¹⁶ In 2016 the AU's Chairperson said that the UN is bound to work to ensure Western Sahara's self-determination by the principles of the UN Charter and urged greater transparency in the UN Security Council, which he said is not making any progress on the matter.¹¹⁷ Namibia spoke on behalf of the Geneva Support Group for Western Sahara to raise concerns about the lack of attention given by the UN Security Council concerning the Saharawi people, and recalled that the denial of the right to self-determination of people under colonial occupation constitutes a violation of the UN Charter and called for a referendum on self-determination as stated in UN Resolutions.¹¹⁸

113 "South Africa at the United Nations Security Council (2007-2008)." *Permanent Mission of South African to the United Nations*, <http://www.southafrica-newyork.net/pmun/SAatUNSC.html>.

114 Nichols, Michelle. "UN Council Renews Contentious W. Sahara Mission." *Reuters Africa*. April 24 2012. <http://af.reuters.com/article/topNews/idAFJJOE83N0D220120424>.

115 United Nations Security Council Press Release. "Security Council Extends United Nations Mission in Western Sahara until 31 October, Unanimously Adopting Resolution 1754 (2007)" April 30, 2007. <http://www.un.org/press/en/2007/sc9007.doc.htm>

116 "Statements and Speeches." *Permanent Mission of South African to the United Nations*, October 7, 2016. http://www.southafrica-newyork.net/pmun/statements%202016/fourthcommittee_item58_20161007.html.

117 "This is no longer a time for promises, African leaders tell UN, urging action on Global Goals." *UN News Centre*. September 22 2016. <http://www.un.org/apps/news/story.asp?NewsID=55028&Kw1=Western+Sahara&Kw2=&Kw3=#.WOvbabGZOHo>

118 "Human Rights Council concludes interactive dialogue with the UNHCR on his Annual Report." *United Nations Human Rights Office of the High Commissioner*. March 9 2017. <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21331&LangID=E>.

Maintaining Western Sahara's Relevance and Importance

The AU is diligent in its coordination of efforts and attention given toward a solution for Western Sahara's status, and these efforts elevate Western Sahara's claim of independence to an international level. The AU Ordinary Sessions reiterate all relevant decisions regarding Western Sahara on a regular basis. During the celebration of the AU's 50th anniversary in May 2013, the AU emphasized the renewal of parties to take direct negotiations. The PSC maintains its recognition of SADR despite Morocco's absence from PSC meetings and its attempts to prevent any decisions from being made with respect to the Saharawi cause.¹¹⁹ On March 27, 2015, the PSC passed a communiqué at its 496th meeting deciding to regularly review the situation in Western Sahara at least twice a year on the basis of updates and recommendations provided by the chairperson of the commission.¹²⁰ In addition, the communiqué expanded the ad hoc committee (established in 1978) to comprise ten heads of state and government, two from each of the five regions of the continent, and established an International Contact Group for Western Sahara (ICG-WS), to keep the issue on the international agenda and to mobilize the necessary support for the early resolution of the conflict. The communiqué invited the chairperson of the commission to undertake all necessary consultations for a solution. To carry out the decisions of the communiqué, the PSC reopened the AU office in Laayoune, Western Sahara, to reactivate the ad hoc committee of Heads of State and Government on Western Sahara.¹²¹ The PSC is planning to renew its interests in Western Sahara before MINURSO expires on April 30, 2017.¹²² The executive council at its 21st ordinary session from January 24-25, 2013 reiterated its call for Morocco and Polisario to begin direct negotiations to work toward a mutually acceptable political solution for the self-determination of the people of Western Sahara and requested all necessary measures be taken.¹²³

South Africa recognized SADR in September 2004 when Morocco rejected the UN referendum, resulting in Morocco breaking off diplomatic ties with South Africa. South

119 "PSC meets without Morocco," *Sahara Press Service*. March 23, 2017.

120 African Union Peace and Security Council Communiqué. "On the Situation in Western Sahara," March 27, 2015.

121 "A Shaky Start for Morocco in the AU." April 3 2017. *ISS* <https://issafrika.org/pscreport/on-the-agenda/a-shaky-start-for-morocco-in-the-au>.

122 In accordance with Decision 2285 of 29 April 2016.

123 African Union Executive Council Decision, 22nd Ordinary Session, January 21-25, 2013. EX.CL.Dec.758 (XXII).

Africa withheld its recognition of SADR as long as the people were being offered the right to determine their future through a referendum, which Morocco withdrew from in 2004. Former South African president Thabo Mbeki called the situation in Western Sahara a “great shame and regret for the continent.”¹²⁴ South Africa's ruling party, the African National Congress (ANC), stressed that Western Sahara's struggle for self-determination is one of the party's priorities and announced the launch of an international campaign to denounce Morocco's violations of the AU and UN Resolutions.¹²⁵ The ANC called upon AU member states to contribute to its efforts and called for direct negotiations between Morocco and SADR until self-determination is ensured.¹²⁶ South Africa pointed out that MINURSO is the only UN peacekeeping mission that lacked a humanitarian mechanism, criticizing the UN Secretary-General.¹²⁷ On September 28, 2015 at the UN General Assembly, South African President Jacob Zuma reiterated his support for the people of Western Sahara and urged the international community to support their struggle.¹²⁸

As a way to garner media support for the Saharawi's independence struggle, the AU headquarters hosted a seminar and photo exhibition on April 25, 2016 titled *A Lifetime in Exile* displaying the Saharawi people in exile and the situation of human rights for 40 years.¹²⁹ The AU Commission and the International Committee of the Red Cross (ICRC) held a delegation discussing the status and solutions to challenges in providing assistance to people injured by landmines and explosive remnants of war.¹³⁰ South Africa hosted a panel discussion with SADR, bringing together ambassadors, students, academics and state authorities to discuss the status of Western Sahara.¹³¹ SADR has an embassy in Pretoria,

124 Lulie, *Western Sahara Debate*.

125 “South Africa's ANC Declares 2017 Year of Support to Saharawi Arab Democratic Republic.” *Sahara Press Service*. March 20, 2017. <http://www.spsrasd.info/news/en/articles/2017/03/20/7820.html>.

126 Maite Nkoana-Mashabane, “South African FA Minister: Independence of Western Sahara is an Inalienable Right.” January 7, 2017. <http://www.sadr-emb-au.net/south-african-fa-minister-independence-of-western-sahara-is-an-inalienable-right/>.

127 “Will SA Vote With its Head Rather than its Hear over Western Sahara Dispute?” *Cape Times*. April 30, 2007.

128 “In UN Speech, South African President calls for Reform of Security Council.” *UN News Centre*. September 28, 2015. <http://www.un.org/apps/news/story.asp?NewsID=52021#.WPF1g7GZOHo>.

129 McNeish, Hannah. “Photo Exhibition: 40 faces, 40 years” and “Western Sahara's Struggle for Freedom Cut off by a Wall.” *Aljazeera*. June 5 2015. <http://www.aljazeera.com/indepth/features/2015/05/western-sahara-struggle-freedom-cut-wall-150528065625790.html>.

130 “SADR Participates to the AU/ICRC Workshop on Assistance for Victims of Landmines and Other Explosive Remnants of Wars.” *SADR Permanent Mission in Ethiopia and African Union*. March 4, 2014. <http://www.sadr-emb-au.net/sadr-participates-to-the-aucirc-workshop-on-assistance-for-victims-of-landmines-and-other-explosive-remnants-of-wars/>.

131 “Self-Determination Hoped Revived Again.” Pretoria News. March 16 2017. <https://www.pressreader.com/south-africa/pretoria-news/20170316/281797103805481>.

South Africa and keeps close diplomatic ties with them.¹³² South African President Jacob Zuma and SADR President Brahim Ghali held talks in January 2017 to show support for Western Sahara's political goals.¹³³ The AU chairperson, President Robert Mugabe of Zimbabwe (2015-2016), stressed that Africa's failure to decolonize Western Sahara would be a negation of the African ideals and principles of the founding fathers of the OAU.¹³⁴ At the AU executive council meeting on January 28, 2015, the chair of the council, Zimbabwe's Honourable Simbarashe Mumbengegwi, announced that Western Sahara would be one of the top priorities of Zimbabwe's AU presidency in 2015.¹³⁵ Zimbabwe's minister of foreign affairs, Harry Kalaba, expressed support for the efforts of the UN to reach an agreement on the regional dispute in Western Sahara.¹³⁶

The former chairperson of the AU Commission, Nkosazana Dlamini-Zuma,¹³⁷ voiced strong support for Western Sahara's struggle for independence in reiterating the respect for AU communiqués, PSC communiqués¹³⁸ and AU press releases. Dlamini-Zuma showed support and encouragement for SADR's governing bodies and reaffirmed the AU's solidarity with the people of Western Sahara. She made requests to the ACHPR to address the refugee situation in Western Sahara and coordinated AU policies with the relevant parties in Western Sahara. In AU press releases,¹³⁹ and even her Twitter account, she publicly congratulated SADR and emphasized the AU's solidarity for the Saharawi's struggle for independence. She congratulated Polisario leadership for its successful convening of the 14th Polisario Front Congress, held in Dakhla refugee camp, the re-election of their president and the successful election of their 29-member Polisario Front National Secretariat. She convened meetings with

132 Maite Nkoana-Mashabane, "Op-Ed: Independence of Western Sahara in an inalienable right." *Daily Maverick*. January 4 2017. <https://www.dailymaverick.co.za/article/2017-01-04-op-ed-independence-of-western-sahara-is-an-inalienable-right/#.WPFkmLGZOHo>.

133 "South Africa Backs Western Sahara Independence at Talks." *The Independent*. January 7, 2017. <https://www.independent.co.ug/south-africa-backs-western-sahara-independence-talks/>.

134 Cheij Saleh, Mohamed. "Western Sahara: 40 years of Waiting for Decolonization." *The Herald*. July 16, 2015. <http://www.herald.co.zw/w-sahara-40-years-of-waiting-for-decolonisation/>.

135 Cheij Saleh, "Western Sahara: 40 years of Waiting for Decolonization."

136 "Zambia Denies Withdrawing Recognition of SADR" *Algeria Press Service* . February 27 2017. <http://www.spsrasd.info/news/en/articles/2017/02/28/7399.html>.

137 AU Commission Chairperson from 2012-2017, Nkosazana Dlamini-Zuma is a former South African foreign minister.

138 African Union Peace and Security Council Communique of the 496th Meeting. March 27, 2015. PSC/PR/COMM/1 (CDXCVI).

139 "AUC Chairperson Congratulates Saharawi Arab Democratic Republic for Smooth and Peaceful Congress and Elections. Reaffirms its solidarity with the Saharawi People in their Struggle for Self Determination." *African Union Press Release*. December 31, 2015. <https://www.au.int/web/en/pressreleases/19531/auc-chairperson-congratulates-saharawi-arab-democratic-republic-smooth-elections>

the Foreign Minister of SADR¹⁴⁰, which provided a platform for Western Sahara to bring up concerns for human-rights abuses and resource exploitation. The AU ensured that the necessary decisions will take place to resolve their concerns.

In June 2014 AU Commission chairperson Nkosazana Dlamini-Zuma appointed the former AU President, Joaquim Chissano of Mozambique,¹⁴¹ as the AU Special envoy for the Chairperson of the Commission for Western Sahara to lead and coordinate AU efforts. The role of the special envoy is critical in making progress toward a referendum. Chissano provided updates to the PSC on the status of Western Sahara and worked for the implementation of relevant AU policy. Chissano promoted Western Sahara's right to self-determination through diplomatic meetings with the UN Security-Council and international actors,¹⁴² and urged the international community to recognize the role of the AU in finding a solution. He encouraged AU member states to defend the Saharawi cause. On March 20 2016, the PSC announced that it would elevate the status of Chissano from the position of the AU Special envoy to the High Representative for Western Sahara. This gives Chissano greater powers to call for international action and facilitate direct talks between Morocco and Western Sahara.

IV. EVALUATING THE ROLE OF THE AFRICAN UNION

Conclusions and Findings

The UN takes the primary role with MINURSO in oversight of the cease-fire, peacekeeping operations, and the referendum process. The UN mission MINURSO is the main operating force in organizing talks between the parties and overseeing peace. The appointment and backing of key positions, including the UN special envoy, the ad hoc committee and the Group of Friends of Western Sahara are major contributions to the annual renewal of MINURSO's mandate and continued efforts. The UN-led efforts maintain Western Sahara's status as a low priority and it is currently at a standstill. Progress is limited by

140 African Union Press Release No 070/2015 March 24 2014.

<https://www.au.int/web/en/newsevents/25788/au-maintains-its-principled-position-right-self-determination-and-decolonization>.

141 Former president of Mozambique.

142 From 11 to 17 June 2014, the Special Envoy undertook visits to London, Paris, Madrid, Washington and New York, to consult with the relevant British, French, Spanish, US and UN officials. From 6 to 10 September 2014, he visited Moscow, for discussions with Russian officials. From 19 to 22 January 2015, he went to Beijing, where he held consultations with relevant Chinese officials. UN General-Assembly 69th Session, "Letter dated 21 April 2015 from the Permanent Representative of Zimbabwe to the UN addressed to the Secretary-General." April 21, 2015 (A/69/861 – S/2015/240).

internal UN Security Council debates and decreasing funding for MINURSO. The AU special envoy to Western Sahara and chairperson to the AU Commission play a critical role in pressuring the UN to continue to work for the referendum and uphold Western Sahara's status, and their efforts elevate the importance of the issue to the international level. The AU chairperson to the commission and the special envoy put diplomatic pressure on the international community, notably in the UN Security Council, and maintained Western Sahara's right to self-determination as an urgent cause which is still under review and being discussed in AU and UN meetings. A large part of the UN diplomatic pressure is taken by independent member states, for example with South Africa's role of pressuring the UN Security Council on the situation in Western Sahara. The UN receives a large part of its information, updates, status and progress on the situation in Western Sahara from AU-led efforts. The AU urged the UN to increase MINURSO's human rights component and remain partial to referendum plans, and it has criticized the UN when necessary to pressure them on their efforts toward a serious resolution on Western Sahara's status. The AU reiterates the importance of a resolution from a legal perspective with relevant UN Resolutions and the principles of the UN Charter which necessitate the self-determination of Western Sahara and the protection of its resource exploitation and oversight of human rights.

AU member states and civil society organizations play a major role in upholding Western Sahara's right to self-determination and in raising the importance of the territory's status to the international community. AU institutions and member states create media attention and increased public debate regarding Western Sahara's status. Solidarity with the Saharawi struggle for independence and civil society resistance efforts in member states have given a platform for SADR to represent its interests, notably from Algeria and South Africa. The AU raised the internal struggle of Saharawi's on an international level by drawing international attention to the situation of refugees, human rights and resource exploitation, backed with relevant AU legal opinions.

The AU is limited in upholding Western Sahara's status by member states who have either rescinded their recognition of SADR with Morocco's readmission, or opposed it from the beginning. The AU has had limited capacity to negotiate with the parties involved because of Morocco's 32-year absence from the OAU/AU and its reluctance to cooperate with UN and AU demands. Morocco's boycott of the AU and lobbying of member states have compromised the AU's call for negotiations between parties. The AU's limitations are the

conflicting member state positions on SADR's recognition and Morocco's AU boycotts and lobbying of member states. Overall, the AU's diplomatic pressure on the UN, the coordination of legal opinions and civil society efforts work to maintain the importance of Western Sahara's right to self-assessment. It is probable that Western Sahara's claim of independence would be a forgotten cause without the critical role of the AU. The AU's major role has been in its legal findings on resource exploitation in Western Sahara, the coordination of relevant AU policy with the UN, member-state efforts in advocating for Western Sahara's struggle for independence and the key AU positions such as the special envoy and AU Commission chairperson, which all work to put diplomatic pressure on the UN and maintain Western Sahara's right to self-determination a priority.

Future Suggestions

The AU has been successful in upholding Western Sahara's claims, but to work beyond the political deadlock between the parties it needs to do more to restart negotiations between the parties, specifically with member states and civil society taking on a bigger role. Western Sahara can not remain a forgotten conflict and the AU plays a key role in this with its intent to resolve African problems with African solutions. If the AU's primary goal is to ensure Western Sahara's right to self-determination it needs to take a more neutral stance toward Morocco. Morocco's 33-year boycott of the AU and its uneasy diplomatic relations with AU member states over its role in Western Sahara has been a major obstacle toward a resolution on Western Sahara's status. With Morocco now a member state, the AU should reassess its approach and be more open to self-determination under the Moroccan Autonomy Plan to give Morocco an incentive to work toward a resolution. The Moroccan Autonomy Plan can be renegotiated between parties under UN and AU oversight to incorporate mutually acceptable provisions and guarantee a referendum on full independence, partial autonomy, or rule by Morocco. Self-determination can be guaranteed under such a plan, and it is in the best interest of both parties to engage in direct negotiations to work out a mutually acceptable draft referendum, one in which a partial autonomy negotiation can devolve greater powers to SADR and local governing bodies. It is important that SADR's interests are taken into full consideration, as ensured under AU and UN supervision, and the AU should propose a time frame for a referendum to be held. The AU needs to reassess its approach with Morocco but should nonetheless remain firm in upholding its fundamental principles. The AU should

present the UN with a focused proposal of clearly outlined interests of both parties and be more active in working with SADR and Morocco directly. The AU should act as a neutral intermediary between parties.

SADR's interests need to be taken into account by the UN Security Council and the AU should see this through. The AU can urge the UN Security Council to be neutral in its support and do more in presenting the specific interest of Western Sahara for holding a referendum. The referendum should be overseen by the UN but the AU, on its part, should do more to get Morocco to enter into negotiations. The AU should take Morocco's plan into consideration on the implications of renegotiating the plan with SADR. The AU should bolster SADR's interests in the UN Security Council meetings and support Morocco's interests in the AU on the condition that they agree to a referendum on self-determination.

In the 2016 MINURSO renewal, member states were encouraged to assist in talks and increase funding for the mission. AU member states should answer the UN's call and coordinate civil society efforts, increase medical and military staff to the UN mission, and increase NGO support for refugees and human rights in Western Sahara. States like South Africa and Algeria, which can contribute more funding and are allies with SADR, should increase funding to ACHPR's mission in Western Sahara. One of the major setbacks has been decreased UN funding for MINURSO. The AU needs to engage civil-society efforts to increase media support and international attention to Western Sahara's humanitarian needs. AU member states should highlight resource exploitation by international companies and the status of human rights. It is likely that civil-society resistance within Western Sahara will continue and the AU should continue to express solidarity with their struggles.¹⁴³ Civil-society efforts to expose resource exploitation led the EU Court of Justice to block Moroccan exports of Western Sahara products to the EU.¹⁴⁴ The AU should encourage efforts like this, including boycotts and bans that limit Morocco's profits from Western Sahara and hurt its diplomatic relations. The UNHCR should also increase its funding and involvement in Western Sahara. The AU should further consider criticizing the UN Security Council because it lacks an African state in the Group of Friends on Western Sahara, which is a group for the advocacy of Western Sahara.

143 “Participating in Sahara-Marathon is Another Form of Support to Saharawi People's Fight.” *Sahara Press Service*. February 26, 2016. <http://www.spsrasd.info/news/en/articles/2016/02/26/113.html>.

144 “WSC Newsletter March 21 2017.” The Western Sahara Campaign UK. March 21, 2017. <http://www.smalgangen.org/a154x1117>.

Polisario was accepted into the Geneva Council by the Swiss Federal Council in 2015.¹⁴⁵ Progress like this will help Polisario's credibility and Western Sahara's human-rights organizations and efforts by Polisario should continue to appeal to international actors and human-rights organizations in the future. SADR should create more diplomatic ties with nations that recognize its status and strive to create stronger ties with the nations that do not recognize them, possibly through trade deals. SADR should remain close to South Africa and Algeria, which confirmed its support for Polisario. Neutral member states such as Mauritania need to take a stronger stance in the AU. In regional organizations that Morocco is part of, like the UMA and ECA, member states that back SADR should limit Morocco's role and refuse to engage in deals with Morocco if it continues to delay negotiations with Polisario.

The UN will vote to renew MINURSO, which is set to expire on April 30, 2017. The AU should encourage a renewal of the mandate with an expanded human-rights component to report and monitor human-rights violations in Morocco and Western Sahara, expanding its reach from just monitoring the border area. It is possible that if the MINURSO mandate is not renewed the AU will have an opportunity to resolve the issue itself now that Morocco is a member state, but there are no guarantees that Morocco will abide by AU rules.

There is an opportunity to enforce AU declarations to ensure Morocco's participation toward a solution for Western Sahara's status. Since SADR is willing to negotiate with Morocco the AU should increase its efforts for direct talks between the parties and renew its efforts to negotiate a referendum but do so in a more neutral way.¹⁴⁶ The new AU Commission chair, Moussa Faki Mahamat from Chad, took office on March 14, 2017. He has the opportunity to call for a greater role from the AU in resolving Western Sahara's status. The AU should change its approach to Morocco and offer it greater powers within the AU on the condition that Morocco cooperates with the UN mission, ensures the demilitarization of The Berm, and respects the PAP rulings on resource exploitation and territorial sovereignty. Morocco should abide by all provisions of the AU Constitutive Act, including respect for colonial borders and territorial sovereignty, and member states should pressure them to do so directly. Moroccan attempts to boycott AU meetings and prevent SADR's participation in regional organizations¹⁴⁷ are unacceptable, and AU member states should address Morocco

145 Khalil Asmar, "Growing International Recognition of Western Sahara Offers New Hope for Africa's Last Colony." August 25, 2016. *Ceasefire*. <https://ceasefiremagazine.co.uk/growing-international-recognition-western-sahara-offers-hope-africas-colony/>.

146 "SADR Ready to negotiate with Morocco to End Occupation." January 31, 2017.

147 "A New Blow to the Moroccan Diplomacy in the Capital of its Senegalese Ally: the AU is Still Hard

directly in AU meetings to hold them accountable for their actions with economic or diplomatic sanctions. The AU should further encourage a Chapter VII plan under the UN Charter to enforce a referendum and hold Morocco accountable for breaches of the cease-fire or the referendum process. Chapter VII plans can include necessary demonstrations and partial or complete economic and diplomatic sanctions on Morocco by UN member states.