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**THE WESTERN SAHARA CONFLICT: A CASE STUDY IN
FAILURE OF PRENEGOTIATION AND
PROLONGATION OF CONFLICT**

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INTRODUCTION

In dealing with protracted conflict, the main challenge stems from understanding the motives of the parties: why they “would not recognize each other, would not talk to each other, would not commit themselves to a negotiated settlement, and would not negotiate.”¹ This is further complicated when each party feels that “right”—however defined—is on its side no matter what claims exist to the contrary, even those embedded in international law. Either side’s stubborn insistence on the rightness of its point of view may lead it to act in ways that circumvent internationally agreed upon resolutions, and thus prolong the conflict and/or create an impasse.

In any conflict, a number of rules accepted and adhered to by both protagonists must exist if the conflict is to be resolved, or a compromise reached through negotiation.² In most protracted conflicts, the players have either not subscribed to such prerequisites or, in many instances, have not fully acknowledged them. The issue is more intricate in situations where, for reasons of pride and status, a party to the conflict feels that it has nothing to gain from entering into negotiation.³ This same party may decide that its “sovereignty,” even if it is not recognized by anyone in the world—let alone the other party—cannot be the subject of negotiation. History shows us, however, that political leaders, even the most unyielding on the issue of

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1. Harold Saunders, *We Need a Larger Theory of Negotiation: The Importance of Pre-negotiating Phases*, 1 *NEGOTIATION J.* 249, 251 (1985).

2. A good discussion of this point can be found in RAYMOND COHEN, *NEGOTIATING ACROSS CULTURES: COMMUNICATION OBSTACLES IN INTERNATIONAL DIPLOMACY* 8-11 (1991).

3. *Id.* at 11-14.

negotiating with the “rebels,” the “secessionists,” or the “puppets,” end up doing just that; French President Charles de Gaulle finally sat down with the Algerian FLN, as did the Israelis with the PLO. The key to understanding this process, therefore, is to comprehend the factors that “trigger” prenegotiation. A partial explanation is found in the definition of prenegotiation given by one of its proponents:

Prenegotiation begins when one or more parties considers negotiation as a policy option and communicates this intention to other parties. It ends when the parties agree to formal negotiations . . . or when one party abandons the consideration of negotiation as an option. . . . In essential terms, prenegotiation is the span of time and activity in which the parties move from conflicting unilateral solutions for a mutual problem to a joint search for cooperative multilateral or joint solutions.⁴

Despite its numerous merits, this definition is too inclusive, thereby reducing its analytic focus. What of mere contacts between conflicting parties? Do these constitute prenegotiation? What if the contact is merely a maneuver to content international public opinion or to set the stage for confidence-building with the “patron” at the expense of the “client” of one of the two parties involved in the conflict? Or, what if the objective is an attempt to create discord between two allies? Further, what if the objective is to divide the leadership and/or membership of the opponent? In other words, should “strategic bargaining” in which there is no genuine intent to negotiate, but where other calculations are the primary objective—be regarded as prenegotiation? Only if one accepts strategic bargaining as prenegotiation, would it be possible to argue that in the case of Western Sahara, there have been instances, albeit failed, of prenegotiation. The best that can be said is that there have been periodic contacts, both direct and indirect, between the parties. Each party has had different motives for making contact and each has held out the promise—never fulfilled—that it would prepare for negotiation.

In this Article, I will argue that: (1) only one party to the Western Sahara conflict, the Popular Front for the Liberation of Saguia el Hamra and Rio de Oro (POLISARIO), has sought to negotiate, whereas the other, Morocco, has used strategic bargaining as a way of circumventing pre-negotiations and has never had any intention of “getting to the table”; (2) domestic imperatives, cultural factors, and the support, ambivalence or weakness of outside powers, have played a crucial role in preventing Morocco from undertaking genuine prenegotiations; (3) whatever the evolution of the conflict and regardless of changes in the domestic, regional, and international contexts, unless a credible process of negotiation is initiated, there is no reason to believe that the Western Sahara conflict will end in the foreseeable future.

4. I. William Zartman, *Prenegotiation: Phases and Functions*, in *GETTING TO THE TABLE: THE PROCESSES OF INTERNATIONAL PRENEGOTIATION* 1, 4 (Janice Gross Stein, ed. 1989).

I. ORIGIN AND DEVELOPMENT OF THE WESTERN SAHARA CONFLICT

After the Namibian issue was successfully resolved in Spring 1990, the Western Sahara dispute, dating back to 1975, became one of the longest running regional conflicts, and the last unresolved decolonization issue in Africa. The necessary ingredients for solving the conflict have been present for many years and some "ripe moments" for resolution have been missed.⁵ Because scholars are divided over the conflict in Western Sahara, depending on their sympathy or lack thereof for the Sahrawi national liberation movement, my description of the genesis of the conflict will rest primarily on those questions that, whatever their rationality, find their support in international law.⁶

The origin of the Western Sahara conflict lies in the fact that Spain, the colonial power since 1884, failed to abide by its commitment to hold a referendum on self-determination in the Spanish Sahara. Such a referendum was first demanded by the United Nations in 1965⁷ and by the Organization of African Unity (OAU) in 1972.⁸ Spain's attempt to hold the referendum in 1974 was interrupted when Mauritania and Morocco—the latter of which had "historic" claims over the entire territory—persuaded the U.N. General Assembly to adopt a resolution on December 13, 1974⁹ which solicited the International Court of Justice (ICJ), without prejudice to the application of the

5. See I. WILLIAM ZARTMAN, *RIPE FOR RESOLUTION: CONFLICT AND INTERVENTION IN AFRICA* (1985). For other detailed accounts of the origins of the conflict and its evolution, see INTERNATIONAL DIMENSIONS OF THE WESTERN SAHARA CONFLICT (Yahia Zoubir & Daniel Volman eds., 1993) [hereinafter INTERNATIONAL DIMENSIONS]; TONY HODGES, *WESTERN SAHARA: THE ROOTS OF A DESERT WAR* (1983), updated and published in French as SAHARA OCCIDENTAL: ORIGINES ET ENJEUX D'UNE GUERRE DU DÉSERT (1987) [hereinafter SAHARA OCCIDENTAL].

6. Hodges, Zoubir, and Volman are favorable to the right of the Sahrawi people to self-determination as expressed in resolutions of the United Nations and the Organization of African Unity. See HODGES, *supra* note 5; INTERNATIONAL DIMENSIONS, *supra* note 5. Zartman supports Moroccan territorial claims to Western Sahara, or at least a compromise between Algeria and Morocco. He believes that "there is little interest in seeing additional states carved out of the Sahara, for they can only be further cases of African balkanization, needing financial and development assistance, open to competing influences from neighbors, and a rising temptation to outside powers' interference." ZARTMAN, *supra* note 5, at 26. It is questionable—especially in the post Cold-War era—how valid such arguments are. Can a people really be denied self-determination only because they may later need foreign assistance? In fact, Western Sahara has much more wealth (phosphates, fisheries, natural gas, many valuable minerals, and a vast potential for tourism) than many newly recognized states. Damis is also sympathetic to Morocco's claims. See JOHN DAMIS, *CONFLICT IN NORTHWEST AFRICA: THE WESTERN SAHARA DISPUTE* (1983).

7. G.A. Res. 2072, U.N. GAOR, 20th Sess., Supp. No. 14, at 59-60, U.N. Doc. A/6014 (1965).

8. *Resolution on the so-called Spanish Sahara*, A.H.G. Res. 272, 9th Ord. Sess., Rabat, June 12-15, 1972, taken into consideration by G.A. Res. 2983, U.N. GAOR, Supp. No. 30, at 84-85, U.N. Doc. A/8730 (1972). See HODGES, *supra* note 5, at 107.

9. G.A. Res. 3292, U.N. GAOR, 29th Sess., Supp. No. 31, at 103-04, U.N. Doc. A/9631 (1974).

principles embodied in General Assembly Resolution 1514 (XV),¹⁰ to give an advisory opinion at an early date on the following questions:

“1. Was Western Sahara (Rio de Oro and Sakiet El Hamra) at the time of colonization by Spain a territory belonging to no one (*terra nullis*)?”

If the answer to the first question is in the negative,

“2. What were the legal ties between this territory and the Kingdom of Morocco and the Mauritanian entity?”¹¹

It is important to cite the conclusion of the ICJ at length:

The materials and information presented to the Court show the existence, at the time of Spanish colonization, of legal ties of allegiance between the Sultan of Morocco and some of the tribes living in the territory of Western Sahara. They equally show the existence of rights, including some rights relating to the land, which constituted legal ties between the Mauritanian entity, as understood by the Court, and the territory of Western Sahara. On the other hand, the Court’s conclusion is that the materials and information presented to it do not establish any tie of territorial sovereignty between the territory of Western Sahara and the Kingdom of Morocco or the Mauritanian entity. Thus the Court has not found legal ties of such nature as might affect the application of resolution 1514 (XV) in the decolonization of Western Sahara and, in particular, of the principle of self-determination through the free and genuine expression of the will of the peoples of the Territory.¹²

Unquestionably, whatever one’s political or ideological leanings, the holding of the ICJ unequivocally rejected both Morocco’s and Mauritania’s claims to pre-colonial territorial sovereignty over the Spanish Sahara and upheld the Sahrawis’ right to self-determination. King Hassan, however, was not persuaded. He interpreted this ruling as an affirmation of Morocco’s own

10. *Declaration on the granting of independence to colonial countries and peoples*, G.A. Res. 1514, U.N. GAOR, 15th Sess., Supp. No. 16, at 66, U.N. Doc. A/4684 (1960). It is important to note that this right to self-determination for all non-self-governing territories was coupled with respect for the territorial integrity of the given territory as it advanced toward independence. For a good discussion of this issue, see Thomas Franck, *The Theory and Practice of Decolonization—The Western Saharan Case*, in WAR AND REFUGEES: THE WESTERN SAHARA CONFLICT 9-15 (Richard Lawless & Laila Monahan eds., 1987) [hereinafter WAR AND REFUGEES]; Anthony G. Pazzanita, *The Proposed Referendum in the Western Sahara: Background, Developments, and Prospects*, in INTERNATIONAL DIMENSIONS, *supra* note 5, at 187 [hereinafter *The Proposed Referendum*].

11. G.A. Res. 3292, U.N. GAOR, 29th Sess., Supp. No. 31, at 104, U.N. Doc. A/9631 (1974).

12. Advisory Opinion, *Western Sahara*, 1975 I.C.J. 68 (Oct. 16). For elaborate discussions of the ICJ’s opinion, see HODGES, *supra* note 5, at 368; Thomas Franck, *The Stealing of the Sahara*, 70 AM. J. INT’L L. 694 (1976); George Joffé, *The International Court of Justice and the Western Sahara Dispute*, in WAR AND REFUGEES, *supra* note 10, at 16. See also GERHARD VON GLAHN, *LAW AMONG NATIONS: AN INTRODUCTION TO PUBLIC INTERNATIONAL LAW* 322-24 (4th ed. 1981).

claims,¹³ discarded the Court's opinion, and launched the so called "Green March" of 350,000 Moroccans (civilians and troops) into the territory. The March was the prelude to Morocco's (re)colonization of Western Sahara. It must be emphasized that Western Sahara is not a case where a territory seceded from a recognized country. In fact, POLISARIO—founded in 1973 by Sahrawi nationalists to liberate the territory—seeks self-determination within the Spanish colonial boundaries, thus accounting for the relative ease with which the proclaimed state was admitted to the OAU in 1984.¹⁴

Under the terms of the Madrid Accords of November 1975, Spain, succumbing to pressure from the United States,¹⁵ ceded administrative control over Western Sahara to Morocco and Mauritania on February 26, 1976.¹⁶ This led to tension with Algeria, the main supporter of the Sahrawi nationalist cause. The heightened tension doomed prospects for a peaceful settlement. Clearly, both Morocco and Mauritania were opposed to the holding of a referendum on self-determination for fear that the Sahrawis would vote overwhelmingly for independence.¹⁷ In fact, one day before the ICJ rendered its opinion on Western Sahara on October 16, the U.N. mission of inquiry published its report in which it concluded that "the majority of the population within the Spanish Sahara was manifestly in favor of independence."¹⁸

POLISARIO, which since its creation had led attacks against Spanish colonial forces, now shifted the focus of its guerrilla war to Moroccan and, until their withdrawal in 1979, Mauritanian troops. The day Spain finally withdrew on February 27, 1976, POLISARIO proclaimed Western Sahara an independent state, to be known as the Sahrawi Arab Democratic Republic (SADR).¹⁹ Algeria's recognition of the new state on March 6 led Morocco and Mauritania to break off diplomatic relations with their eastern neighbor.²⁰ Further, Moroccan bombardments of the refugee camps set up outside

13. Morocco's response to the ICJ's opinion was as follows: "The Opinion of the Court can only mean one thing . . . The so-called Western Sahara was a part of Moroccan territory over which the sovereignty was exercised by the Kings of Morocco and the population of this territory considered themselves and were considered to be Moroccans. . . . Today, Moroccan demands have been recognized by the legal advisory organ of the United Nations." Press release of the Permanent Mission of Morocco to the U.N., October 16, 1975, *quoted in* HODGES, *supra* note 5, at 210.

14. BENYAMIN NEUBERGER, NATIONAL SELF-DETERMINATION IN POSTCOLONIAL AFRICA 28 (1986).

15. See generally LEO KAMIL, FUELING THE FIRE: U.S. POLICY AND THE WESTERN SAHARA CONFLICT (1987).

16. Agreement on the Question of Western Sahara, Nov. 14, 1975, Morocco-Mauritania-Spain, reprinted in *Third Report by the Secretary-General in Pursuance of Resolution 379 (1975) Relating to the Situation Concerning Western Sahara*, U.N. SCOR, 30th Sess., U.N. Doc. S/11880, annex I (1975).

17. *Spanish Sahara: Their Best Chance*, THE ECONOMIST, Sept. 13, 1975, at 58.

18. *Report of United Nations Visiting Mission to Spanish Sahara*, U.N. GAOR, 30th Sess., Supp. No. 23, at 66, U.N. Doc. A/10023/Rev.1 (1975).

19. PAUL BALTA, LE GRAND MAGHREB DES INDÉPENDANCES À L'AN 2000 175 (1990).

20. *How Unstable is Africa?* THE ECONOMIST, Mar. 13, 1976, at 58.

the major Sahrawi cities, created a new wave of forced migrations.²¹ Tens of thousands of Sahrawi refugees now found sanctuary in the southwestern part of Algeria (near Tindouf), where camps administered by POLISARIO were set up.²² Moreover, continued Algerian support for POLISARIO—motivated by that country's traditional commitment to movements of national liberation, compelling geopolitical considerations, and mistrust of its regional rival—led to Moroccan threats of “hot pursuit” against Sahrawis living in the Tindouf area, in retaliation for POLISARIO attacks against Moroccan positions in Western Sahara.²³ An all-out war between Algeria and Morocco was avoided, although two deadly clashes did occur in January and February 1976.²⁴ On the diplomatic level, the two regional rivals squared off over the Western Sahara issue, staking out positions that they continue to hold to this day. Morocco has sought support for its irredentist claims from its traditional allies in the West, as well as from conservative African countries. Algeria has extended material and political support to POLISARIO and has sought to convince the OAU and the Non-Aligned movement that decolonization of Western Sahara should pursue its course to Sahrawi independence. The Sahrawis, for their part, in addition to forming an army and building state structures,²⁵ undertook diplomatic activities throughout the world to obtain backing for their cause.

Reassured by continued French and U.S. military assistance—and by strong domestic support from its political parties and the population at large—Morocco set out to strengthen its military position in the occupied territory.²⁶ In order to fortify its occupation of Western Sahara, Morocco began making extensive investments in the former colony and encouraged its citizens to settle there.²⁷ Moroccan settlement had the effect of displacing Sahrawis, who moved to the north and to southern Morocco.²⁸ Morocco also began a process of militarization which almost doubled the size of its armed forces.²⁹

Convinced of Morocco's “historic and legitimate” claims to the territory, King Hassan viewed Sahrawi nationalists as Moroccan secessionists sponsored

21. See generally BALTA, *supra* note 19, at 174-75; ABDELKHALEQ BERRAMDANE, LE SAHARA OCCIDENTAL: ENJEU MAGHRÉBIN 61 (1992).

22. BALTA, *supra* note 19, at 175, 213. See NICOLE GRIMAUD, LA POLITIQUE EXTÉRIEURE DE L'ALGÉRIE 324 (1984); BERRAMDANE, *supra* note 21, at 54-56, 62, 84.

23. Cf. BERRAMDANE, *supra* note 21, at 84.

24. HODGES, *supra* note 5, at 232. See also *Western Sahara: War Stories*, THE ECONOMIST, Feb. 7, 1976, at 49.

25. See Stephen Zunes, *Building a Peaceable Kingdom in Wartime*, FRIENDS JOURNAL, July 1988, at 22; HODGES, *supra* note 5, at 337-348.

26. See HODGES, *supra* note 5, at 293-306.

27. *Id.* at 229-32.

28. Robert Bookmiller, *The Western Sahara: Future Prospects*, AMERICAN-ARAB AFFAIRS, Summer 1991, at 64, 65. See also Yahia Zoubir, *Western Sahara Conflict Impedes Maghrib Unity*, MIDDLE EAST REP., Mar.-Apr., 1990, at 28, 29 [hereinafter *Conflict Impedes Maghrib Unity*].

29. HODGES, *supra* note 5, at 293-95.

by the Algerian government.³⁰ Thus, he adamantly refused to recognize the question of Western Sahara as a decolonization issue or to agree to talks with POLISARIO.³¹ The contention in this Article is that King Hassan, to this day, has not moved away from this position. Even though direct and indirect talks have taken place, they were part and parcel of the King's periodic maneuverings, for he was convinced—and probably still is—that real negotiations will eventually be with the Algerians. The Algerians, for their part, have always insisted that they have no territorial claims, nor are they an active party to the conflict. They are not disinterested, however. They define their position as one of a “concerned” party (*partie intéressée*) to the conflict and would not agree to any illegitimate annexation of the territory by Morocco.

Despite their numerical superiority, Moroccan troops suffered severe military defeats.³² In the first few years of the conflict, the main concern for outside regional and international powers was the permanent situation of *casus belli* between Algeria and Morocco; yet, there was no war, and communication between the two countries never ceased, despite the absence of diplomatic relations. A kind of *modus vivendi*, whereby no direct military confrontation between the two regional giants was permitted to occur, has been in place since the two major clashes at Amgala in 1976—despite King Hassan's threats of hot pursuit thereafter. As of 1977, Algeria's leadership declared that no bilateral disputes existed between the two countries; its policy consisted of urging Moroccan and POLISARIO representatives to pursue direct negotiations.³³ In many ways, this has remained Algeria's policy until the present. At the height of the diplomatic war with Morocco, the objective was to have the international organizations endorse the principle of self-determination for the Sahrawi people and direct negotiations as the main avenue for achieving an equitable solution. Perhaps it is worth mentioning that, whatever other considerations, this position was a reflection of Algeria's own historical experience.³⁴

Even if Morocco rejected the principle of negotiations with POLISARIO, it did seek to build bridges with Algeria while remaining steadfast in the situation on the ground. The major initiative was launched by the King himself who proposed, through an emissary, the holding of bilateral discussions. His own sister, Princess Aïcha, would represent him. Indeed, she met in December 1977 with Algerian president Houari Boumédiène's political advisor, Dr. Ahmed Taleb Ibrahimi, in Lausanne, Switzerland.³⁵ The King's advisor, Ahmed Réda Guedira replaced the Princess in the several

30. *Id.* at 312.

31. *Id.*

32. *Id.* at 284-91.

33. GRIMAUD, *supra* note 22, at 213.

34. *See generally id.*

35. ZARTMAN, *supra* note 5, at 49.

talks that were held between the two advisors during the first six months of 1978.³⁶ A working document was elaborated and was meant to serve as the basis for discussion for the two heads of state, who were scheduled to meet in Brussels on July 6, 1978.³⁷ Morocco had apparently agreed to make substantial concessions regarding the division of the territory between POLISARIO and Morocco.³⁸ However, King Hassan decided not to leave for the meeting in Brussels, perhaps because he was aware of the coup d'état that was in the making in Mauritania.³⁹

In October 1978, the King's envoys, Ahmed Réda Guedira, Ahmed Dlimi, and Ahmed Bensouda met in Bamako, Mali, with Mahmoud Abdelfattah, a very young and inexperienced low-level POLISARIO official. The meeting took place in the presence of the president of Mali, Moussa Traoré. The nature of the contact was "quite superficial and was aimed at testing what the Algerians were really up to. The Moroccan side also tried to lure us into giving up the fight through making us all kinds of offers."⁴⁰ Apparently, the King also offered POLISARIO leaders cabinet positions in his government if they abandoned their struggle for independence and urged them to enter Mauritanian politics, since a change of government had occurred in that country.⁴¹ The real reasons behind Morocco's seemingly conciliatory approach were the country's military setbacks against POLISARIO forces and the fear that the conflict would spread beyond the southern borders, inside Moroccan territory itself.

Although it has already been dealt with in greater detail elsewhere,⁴² the situation that led to the Bamako negotiations between POLISARIO and Mauritania ought to be discussed, albeit briefly. POLISARIO pursued a two-tack policy vis-à-vis Mauritania, the weakest of its two opponents, but also the closest ethnically and linguistically.⁴³ POLISARIO troops launched intensive attacks aimed at crippling Mauritania's economic base, while making continued diplomatic contacts for a separate peace. The success of POLISARIO attacks resulted on July 10, 1978 in a military coup in Mauritania.⁴⁴ This prompted a cease-fire by POLISARIO fighters.⁴⁵ Shortly after, extensive discussions were held in September in Paris between

36. *Id.*

37. *Id.*

38. BALTA, *supra* note 19, at 224.

39. For a detailed account of the coup, see HODGES, *supra* note 5, at 257-65.

40. Interview with Mahmoud Abdelfattah, POLISARIO official in Geneva (Jan. 17, 1994). Mr. Abdelfattah is today a member of the POLISARIO's National Directorate and president of the commission of identification of eligible voters in the referendum for self-determination to be decided by the United Nations.

41. HODGES, *supra* note 5, at 329.

42. ZARTMAN, *supra* note 5, at 49-50.

43. HODGES, *supra* note 5, at 262-63.

44. Ronald Koven, *Mauritanian President Overthrown in Military Coup*, WASH. POST, July 11, 1978, at A8.

45. *Ceasefire in Mauritania*, WASH. POST, July 13, 1978, at A17.

Sahrawis and Mauritians.⁴⁶ A few weeks afterward, Mauritanian and POLISARIO officials met in Bamako, in the presence of two of Hassan's closest collaborators.⁴⁷ News of Algerian president Boumédiène's serious illness reduced the King's interest in talking to POLISARIO; however, although POLISARIO broke its unilateral cease-fire with Mauritania—due to the latter's failure to withdraw from Tiris el Gharbia, the portion of the territory it occupied—the renewed attacks brought the Mauritians to the negotiating table, and resulted, on August 10, 1979, in the peace agreement signed in Algiers that brought an end to Mauritania's involvement in the conflict.⁴⁸

Prior to that agreement, Morocco (and Mauritania) had hoped that Chadli Bendjedid, the successor of Boumédiène who died in December 1978, would be more amenable to Morocco's irredentist claims and that he would be willing to "sell out" the Sahrawis in exchange for joint exploitation of the rich resources of the territory.⁴⁹ Their hopes went unfulfilled. Chadli Bendjedid, under pressure from the military to be sure, made no concessions whatsoever on Algeria's position concerning Western Sahara. Like his predecessor, he refused to negotiate in lieu of POLISARIO.

In the peace agreement with POLISARIO, Mauritania "solemnly declares that it does not have and will not have territorial or any other claims over Western Sahara" and "decides to withdraw from the unjust war in the Western Sahara."⁵⁰ Attached was a secret clause in which the Military Committee for National Safety pledged "[to] put an end to its presence in the Western Sahara and to hand over directly to the Polisario Front the part of the Western Sahara that it controls within 7 months from the date of the signing the present agreement."⁵¹ The French and Mauritanian idea of a Sahrawi mini-state that circulated for a while was, for different and obvious reasons, acceptable neither to the Moroccans, who saw it as a foothold from which POLISARIO could regain the Moroccan-occupied portion of the territory and legitimize the national aspirations of the Sahrawis, nor to POLISARIO which demanded nothing less than full independence within pre-1975 boundaries.⁵² The peace agreement led to the re-establishment of diplomatic relations between Algeria and Mauritania a few days after it was signed. But in the meantime, Morocco took over most of the sectors previously held by Mauritania before the secret clause of the agreement could be implemented.⁵³

46. HODGES, *supra* note 5, at 270.

47. *Id.* at 270-71.

48. Mauritano-Sahraoui Agreement, Aug. 10, 1979, *reprinted in* U.N. Doc. A/34/427, annex I (S/13503) (1979).

49. BERRAMDANE, *supra* note 21, at 84.

50. Mauritano-Sahraoui Agreement, *supra* note 48, ¶ B.

51. Modalities of the Peace Agreement, *reprinted in* KAMIL, *supra* note 15, app. 3, art 1.

52. HODGES, *supra* note 5, at 267.

53. David Seddon, *Morocco at War*, in *WAR AND REFUGEES*, *supra* note 10, at 98, 103.

From the analysis so far, it appears very clearly that in the Mauritanian case, there was genuine intent to enter negotiation with POLISARIO following the military coup against President Mokhtar Ould Dadda. The ceaseless POLISARIO attacks on Mauritania had proved too costly for that poor country. Yet Mauritania's post-coup leaders hoped to see a global peace settlement because of the fear that a bilateral accord with POLISARIO would alienate King Hassan, whose military forces were still present in Mauritania as a result of the 1977 military pact.⁵⁴ This explains why they sought approval from France, their stronger ally, before initiating any contacts with POLISARIO. The Mauritians hoped that France—whose considerable economic interests in Algeria had been damaged due to French intervention on behalf of Mauritania and its backing of Morocco on the Western Sahara issue (despite its declared neutrality)—would put pressure on Morocco to find a global solution to the problem. But King Hassan, who had mobilized his entire country over the Western Sahara issue, could not allow Mauritania to make territorial arrangements with POLISARIO. From a Moroccan point of view, Algeria, not POLISARIO, was the proper party with which to negotiate.

This, however, did not prevent Mauritania from engaging in prenegotiations with POLISARIO. For its part, Mauritania acknowledged that "POLISARIO is a reality which we recognize, perhaps not as exclusive representative, but we know it exists and has a role to play in the peace process."⁵⁵ Despite Mauritanian leaders' ambivalence, owing to their fear of Morocco, their willingness to talk to POLISARIO compelled the Sahrawis to extend the cease-fire they had unilaterally decreed. Meanwhile POLISARIO had set certain conditions for permanent peace with Mauritania, while continuing direct contacts. Mauritania's misfortune, however, stemmed from being caught between two impossible situations: a threatening and intransigent Morocco on the one hand and an impatient POLISARIO on the other. The resumption of POLISARIO attacks against Mauritania, a year after the cease-fire was instituted, prompted the Mauritanian leadership to overcome its hesitations and fears by accepting negotiations for a peace treaty which mirrored the terms set by POLISARIO's Fourth Congress held in late September 1978.

Clearly, Mauritania's post-coup gesture toward the POLISARIO can be defined as prenegotiation, since, in this particular case, the Mauritians "consider[ed] negotiation as a policy option and communicate[d] this intention to other parties."⁵⁶ The Mauritians succeeded in persuading POLISARIO that a joint solution to a common problem was possible. This phase ended when the Mauritanian and Sahrawi leaders met in Algiers to iron out the details of a peace agreement.

In twenty years since the Western Sahara conflict erupted, this was the

54. HODGES, *supra* note 5, at 271.

55. *Id.* at 270 (quoting Mauritanian foreign minister, Sheikhna Ould Laghdaf).

56. *Pre negotiation, supra* note 4, at 4.

only instance where the notion of prenegotiation applies, for there have never been similar situations involving POLISARIO and Morocco. As far as Algeria and Morocco were concerned, there were occasions which could easily be described as prenegotiations. But there has been no attempt, on the part of the Moroccans, to initiate prenegotiation with the Sahrawis. The core of the problem lies in the fact that Morocco made it an official policy not to recognize POLISARIO as a negotiating partner, whereas Algeria refused to negotiate with Morocco in lieu of the Sahrawi nationalists. This is not to say, however, that negotiation between Morocco and POLISARIO will never occur. The cases of the FLN and France, and the Israelis and the PLO, are good examples of such a reversal in official policy.

II. DIPLOMATIC MANEUVERINGS AND INTERNATIONAL RESOLUTIONS

Unwilling to wage war, Algeria and Morocco sought to convince their friends and foes of the righteousness of their respective positions. A brief review of the period 1977-1985 will summarize the major events.

Both war and peace threatened Mauritania. On March 17, 1981, one day after an attempted coup by disgruntled Mauritanian officers, Mauritania broke diplomatic relations with Morocco, accusing it of being directly involved.⁵⁷ Because Mauritania feared Morocco's continuing irredentist claims to Mauritanian territory, it progressively adopted an attitude of neutrality in the conflict.⁵⁸ Mauritania, however, remained supportive of resolutions favorable to the SADR in international organizations. At the same time, Mauritania did its best to improve relations with Morocco. Although by that time, Mauritania's position on the conflict was closer to Algeria's, fear and realism compelled it to reach an agreement with Morocco later in 1981.⁵⁹ By 1983, Mauritania had entered the Treaty of Fraternity and Concord with Algeria and Tunisia,⁶⁰ and on February 27, 1984 it recognized the SADR.⁶¹

The SADR, meanwhile, made important gains, especially at the OAU and the U.N. This was due in large part to Algeria's diplomatic, logistical and political support, and also to the growing popularity of the Sahrawis' cause in Third World countries, as well as its military successes. By 1979, the OAU adopted a decision in which it called for a cease-fire and the holding of a free referendum in which the Sahrawi people could exercise their right

57. REUTERS, Mar. 18, 1981, available in LEXIS, News Library, WIRES file. Morocco reciprocated in kind the next day. *Id.*

58. See *Mauritania is Moving Closer to its Radical Neighbors*, WASH. POST, May 20, 1981, at A19.

59. HODGES, *supra* note 5, at 325.

60. See Treaty of Fraternity and Concord, Mar. 19, 1983, Alg.-Tunis., reprinted in XXII ANNUAIRE DE L'AFRIQUE DU NORD 694-95 (1983) (French text). On the Greater Maghreb generally, see Robert A. Mortimer, *The Greater Maghreb and the Western Sahara*, in INTERNATIONAL DIMENSIONS, *supra* note 5, at 168-83.

61. Anthony G. Pazzanita, *Mauritania's Foreign Policy: the Search for Protection*, 30 J. MOD. AFR. STUD. 281, 290-91 (1992).

to self-determination.⁶² The choice offered would be total independence, preservation of the status quo, a meeting between all the parties involved in the conflict, etc. In the same year, the U.N. General Assembly recognized POLISARIO as the representative of the Sahrawi people.⁶³ In July 1980, the question of the SADR's admission as a member of the OAU was raised, while in November 1980, the U.N. General Assembly urged Morocco to begin negotiations with POLISARIO.⁶⁴ In June 1981, responding to a nudge from the U.S. and France, and because he feared the possible admission of the SADR to the OAU, King Hassan reversed his position on holding a referendum and declared at the OAU Summit in Nairobi that he would accept "a controlled referendum whose modalities should give justice simultaneously to the objectives of the [OAU's] *ad hoc* committee, that is to say the committee of wise men, and to Morocco's conviction regarding the legitimacy of its rights."⁶⁵

As has become clear since, the King never had any serious intention of allowing the holding of a referendum that he might lose, a position he strongly maintains today. In fact, upon his return to Morocco he stated unambiguously that, "I see the referendum as an act of confirmation" and made it explicit that he rejected the idea that POLISARIO was party to the conflict by declaring that, "For me, the parties interested in the Saharan affair remain Morocco, Algeria, and Mauritania, to the exclusion of Polisario, which has never existed for the African community."⁶⁶ In August 1981, an eight-point resolution regarding the implementation of a referendum in Western Sahara was adopted following the OAU's Nairobi summit.⁶⁷ An Implementation Committee, composed of African heads of state was mandated to take, with the participation of the United Nations, all necessary measures to guarantee the exercise of a general and regular referendum on self-determination by the people of Western Sahara.⁶⁸ To this effect, an immediate cease-fire was to be observed,⁶⁹ and a peacekeeping force was to be provided jointly by the U.N. and the OAU which would then be stationed in Western Sahara to guarantee security during the referendum and supervise the cease-fire.⁷⁰ In pursuance of its mandate, the Implementation Committee deter-

62. *Resolution on the question of Western Sahara*, A.H.G. Dec. 114, 16th Ord. Sess., Monrovia, July 17-20, 1979, reprinted in U.N. Doc. A/34/552, annex II (1979).

63. G.A. Res. 37, U.N. GAOR, 34th Sess., Supp. No. 46, at 203-04, U.N. Doc. A/34/46 (1979).

64. G.A. Res. 19, U.N. GAOR, 35th Sess., Supp. No. 48, at 213-14, U.N. Doc. A/35/48 (1980).

65. HODGES, *supra* note 5, at 311; *The Proposed Referendum*, *supra* note 10, at 195.

66. Roland Delcour, *Le référendum peut être organisé en trois ou quatre mois, déclare le roi Hassan II*, LE MONDE, July 4, 1981, at 6.

67. *Resolution on Western Sahara*, A.H.G. Res. 103, 18th Ord. Sess., Nairobi, June 24-27, 1981, reprinted in U.N. Doc. A/36/534, annex II (1981).

68. *Id.* ¶ 7.

69. *Id.* ¶ 4.

70. *Id.* ¶ 6.

mined *inter alia* that the troops in the conflict would be confined to their bases,⁷¹ those Sahrawis eligible to vote would be those listed in the 1974 Spanish census and relevant UNHCR documents,⁷² the choice offered to the Sahrawis would be independence or integration with Morocco,⁷³ votes would be cast by secret ballot,⁷⁴ and the Implementation Committee would establish an impartial administrative authority headed by a commissioner which would cooperate with local administrative structures, the OAU, and the U.N., to organize the referendum.⁷⁵

The OAU resolutions reflected a compromise between the positions of Morocco (no recognition of POLISARIO, no negotiations with them, and no withdrawal of Morocco's troops or administration) and of Algeria (a genuinely free referendum, an interim administration, and a peacekeeping force). Although it has been argued that these resolutions constituted a good basis for a referendum,⁷⁶ one might also say that what prevented progress toward a referendum was the exclusion by Morocco of POLISARIO as an independent actor, treating it simply as an agent of Algeria, at a time when the SADR was obtaining numerous recognitions. Moroccans were totally opposed to talking to POLISARIO, let alone entering negotiations with its leaders. Moroccan Foreign Minister, M'Hammed Boucetta declared unequivocally:

For us the Polisario does not exist either legally or internationally. We will never recognize the Polisario. There will be no withdrawal of Moroccan troops from our Saharan province, and there is no way that the Moroccan administration will leave the Western Sahara territory.⁷⁷

There is more than a political element in Morocco's consistent refusal to negotiate with POLISARIO. In February 1982, Mr. Boucetta made a statement, the underlying rationale of which went beyond the legal norms he emphasized. He stated that:

Polisario is not recognized as a liberation movement. What is called the SADR is not recognized as a state. *His Majesty the King has clearly stated that Morocco will only negotiate with its equals, with recognized states [i.e., Algeria and Mauritania] . . . to seal or close, or render airtight, their*

71. *Decision of the OAU Implementation Committee on Western Sahara*, IMP.C. Dec. 1, 1st Ord. Sess., Nairobi, Aug. 24-26, 1981, ¶ (c)(III), reprinted in U.N. Doc. A/36/512, annex (S/14692) (1981) [hereinafter *Decision of the Implementation Committee*].

72. *Id.* ¶ (a)(III).

73. *Id.* ¶ (a)(V).

74. *Id.* ¶ (a)(IV).

75. *Id.* ¶ (b).

76. ZARTMAN, *supra* note 5, at 91-92.

77. *The Proposed Referendum*, *supra* note 10, at 220 n.45 (quoting N.Y. TIMES, Feb. 10, 1982).

frontiers, so that incursions cease on all sides.⁷⁸

The psychological element shows clearly in the italicized statement. Indeed, it is very hard, from a Moroccan point of view, to conceive that the King, who has a centuries-old monarchy behind him, would negotiate with poor nomads, "uncouth Bedouins." Not even the Moroccan opposition parties are allowed to negotiate with the King. They are expected to feel privileged enough that the King agrees to listen to what their representatives have to say. The King, who symbolizes so many things, cannot be put on the same level with the opposition parties, let alone with individuals, in this case the Sahrawi nationalists, whom he considers to be the stooges of a foreign government. The closest to a recognition POLISARIO representatives were able to get from the King was in the late 1980s when he described them as Moroccan subjects "who went astray."⁷⁹ Therefore, one should not easily discount the psychological dimension in this conflict, to wit: King Hassan cannot "lower" his prestige by meeting with a non-state entity on an equal footing.

III. THE QUEST FOR A RESOLUTION AND POLITICAL ALIGNMENTS

Little progress was made after the Nairobi Summit mostly because of Morocco's refusal to recognize POLISARIO as its opponent. The OAU's Implementation Committee sought not to aggravate Morocco's sensitivity on the issue of recognition of its adversary. Therefore, although it knew well who the warring parties were, the Committee decided not to name them,⁸⁰ thus failing to get them to negotiate, even indirectly. This situation was interpreted as victory by the Moroccans, who saw a confirmation of their position that "No one is duped any longer. Algeria, that's Polisario, and Polisario is nothing other than Algeria."⁸¹ The Committee failed despite its statement that "a total cease-fire . . . will take effect after consultations with all the concerned parties."⁸²

POLISARIO and Algeria responded by pushing successfully on February 22, 1982 for the admission of the SADR to the OAU.⁸³ The actual admission of the SADR (which for many reasons did not actually take place

78. LE MATIN DU SAHARA (Casablanca), Feb. 10, 1982, *cited in* HODGES, *supra* note 5, at 314 (emphasis added).

79. *King Hassan II Addresses Green March Anniversary*, F.B.I.S.-NEAR EAST AND SOUTH ASIA [hereinafter F.B.I.S.-N.E.S.], Nov. 7, 1988, at 15.

80. *See Decision of the Implementation Committee*, *supra* note 71.

81. LE MATIN DU SAHARA (Casablanca), Feb. 20, 1982, *cited in* HODGES, *supra* note 5, at 314.

82. EL MOUDJAHID (Algiers), Feb. 11, 1982, *cited in* HODGES, *supra* note 5, at 314.

83. HODGES, *supra* note 5, at 314-15. The decision to admit the SADR was made at the OAU foreign ministers' meeting in Addis Ababa. The OAU secretariat, based on the fact that twenty-six member states (a majority) had recognized the SADR, admitted it to the organization without submitting the matter to a vote. *See Please Pretend You Aren't There*, THE ECONOMIST, July 17, 1982, at 35. Nineteen states walked out in protest. *Id.*

until 1984) was followed in June 1983 by a resolution of the Assembly of Heads of State and Government, which exhorted Morocco and the POLISARIO—now named explicitly as the two parties to the conflict—

to undertake direct negotiations with a view to bringing about a cease-fire to create the necessary conditions for a peaceful and fair referendum of self-determination of the people of Western Sahara, a referendum without any administrative or military constraints, under the auspices of the Organisation of African Unity and the United Nations.⁸⁴

The target date for a referendum was December 1983.⁸⁵

Through Saudi mediation, a meeting took place between Bendjedid and King Hassan on February 26, 1983, four months before the OAU resolution was adopted.⁸⁶ The greater affinity between the two men created a good atmosphere, but did little to resolve the conflict because both maintained their respective positions. There was hope that the meeting would lead to a reconciliation between the two states, that the Sahrawi dossier would have a peaceful ending, and that regional cooperation would outweigh the existing problems. Optimism was very high, for the King is said to have hinted in the conversation: "Leave the stamp and the flag for me and everything else is negotiable."⁸⁷ The meeting did not produce any tangible results, for the Algerians did not think that the King had made any noticeable changes in his position, whereas the King felt that the Algerians were seeking to use regional integration as a stratagem to impose the SADR as the sixth Maghrebi state.⁸⁸ According to Zartman, however, aides of the two heads of state discussed a possible compromise on Western Sahara which might be reached before the upcoming OAU meeting in Addis Ababa and thus constitute the basis of an OAU resolution.⁸⁹ In essence, the deal was that Morocco would agree to have a direct meeting with POLISARIO representatives, and in exchange, Algeria would enjoin POLISARIO not to seek OAU membership, but to push, instead, for an early referendum; "Autonomy, federation, and other outcomes less than independence were discussed."⁹⁰

In April, a secret meeting was held in the Algerian capital between the King's advisor, his foreign and interior ministers and three high-level POLISARIO leaders. According to Hodges, the King's emissaries offered the

84. *Resolution on Western Sahara*, A.H.G. Res. 104, 19th Ord. Sess., Addis Ababa, June 6-12, 1983, reprinted in U.N. Doc. A/38/312 (1983).

85. ANTHONY PAZZANITA & TONY HODGES, *HISTORICAL DICTIONARY OF WESTERN SAHARA* 324 (2d ed. 1994).

86. *Morocco-Algeria Meeting*, WASH. POST, Feb. 27, 1983, at A18.

87. BALTA, *supra* note 19, at 181.

88. See Robert A. Mortimer, *The Greater Maghreb and the Western Sahara*, in *INTERNATIONAL DIMENSIONS*, *supra* note 5, at 169-85.

89. ZARTMAN, *supra* note 5, at 57.

90. *Id.*

Sahrawis autonomy within the framework of Moroccan sovereignty.⁹¹ This proposal was rejected by POLISARIO leaders who demanded full sovereignty for the Sahrawi people.⁹² According to a POLISARIO official, the Moroccans did not make any serious proposition even regarding the proffered autonomy:

What they proposed to us was an offer for jobs in the Moroccan government. They also told us that the [Moroccan] nation was forgiving and merciful. We proposed that serious negotiations take place to resolve this conflict. We demanded no less than independence, but we assured the Moroccans that their interests would be taken into account.⁹³

One appreciable aspect of the February meeting between Hassan and Bendjedid is that, according to some analysts, it signaled the beginning of divisions within the Algerian leadership between those favorable to making concessions to the Moroccans at the expense of the Sahrawis and those who remained inflexible on the issue.⁹⁴ This may be plausible, for some high-ranking officers in the Algerian military and POLISARIO officials today admit that Bendjedid was very much in favor of an entente with Morocco and was opposed to a Moroccan military defeat.⁹⁵ The Algerian military, apparently, was intent on either intervening directly against Morocco or allowing an all-out offensive by POLISARIO forces with substantial Algerian backing in order to break the deadlock and to prevent Morocco from achieving a *fait accompli* in the territory.⁹⁶ This desire was especially strong after the completion of the rather effective defensive walls built around the so called "useful triangle" which consists of the phosphate-rich area of Al-Ayoun, Smara, and Bu-Craa.⁹⁷ According to these sources, Bendjedid succeeded in preventing such a decision by the high-command.⁹⁸ The suspicious death on January 25, 1983, of General Ahmed Dlimi, commander of the Moroccan armed forces, may sustain this hypothesis, for Dlimi was said to be in close contact with Algerian officials and, apparently, with POLISARIO leaders as well. He was depicted as favorable to a negotiated settlement with POLISARIO.⁹⁹ However, POLISARIO officials deny that any such contacts with Dlimi ever occurred.

91. SAHARA OCCIDENTAL, *supra* note 5, at 437.

92. *Id.*

93. Interview in Geneva (Mar. 1994).

94. Nicole Grimaud, *La diplomatie sous Chadli ou la politique du possible*, 30 ANNUAIRE DE L'AFRIQUE DU NORD 401, 411 (1994) [hereinafter *politique du possible*].

95. This information was revealed to the author by high-ranking Algerian military officers and POLISARIO representatives.

96. *Id.*

97. *Id.*

98. *Id.*

99. Stephen Zunes, *The United States and the Saharan War: A Case of Low-Intensity Intervention*, in INTERNATIONAL DIMENSIONS, *supra* note 5, at 3, 71 [hereinafter *Low-Intensity Intervention*]; Seddon, *supra* note 53, at 122.

Yet there is also reason to believe that Bendjedid was not as favorable to making concessions to Morocco as other sources seem to suggest. On the basis of his own declarations, it seems that Bendjedid hoped that he could play the role of mediator between the Moroccans and the Sahrawis.¹⁰⁰ In a communiqué issued by the Algerian ministry of foreign affairs shortly after the meeting it was stated that:

The problem of the Western Sahara is a problem of decolonization that opposes our brothers of the Western Sahara to our Moroccan brothers. Algeria has always affirmed that it is prepared to work toward bringing closer our brothers of the Western Sahara and our brothers of Morocco in order to find a solution in line with the inalienable right of the people of the Western Sahara to self-determination and to independence. Algeria is convinced that such a solution, while reestablishing peace in our region, will make possible cooperation commensurate with the ideal of Maghrebi unity. It is in this spirit that Chadli Bendjedid . . . met with King Hassan.¹⁰¹

At the OAU Summit held the following June, the Algerian president explained the purpose of his meeting with Hassan:

I was very clear about Algeria's position on the question of the Western Sahara. . . . I explained to the Moroccan King that I had no mandate to speak in the name of the Sahrawis and that I would not arrogate myself the right to speak in their name or to assume their trusteeship. . . .¹⁰²

However, Chadli said he would "spare no effort" to reconcile Morocco and the Saharawis, in the same way as he had helped to bring together "the brothers in Mauritania and Western Sahara."¹⁰³

By March 1983, Algeria had already signed with Tunisia the Treaty of Fraternity and Concord, which Mauritania adhered to in December the same year, in the hope that Maghrebi unity would create a framework for a definitive resolution of the Western Sahara conflict.¹⁰⁴ It was expected that both Morocco and Libya would join; instead, in August 1984 Morocco and Libya united in an unholy alliance, known as the Treaty of Oujda.¹⁰⁵

The year 1984 was a crucial year in the development of the conflict in

100. SAHARA OCCIDENTAL, *supra* note 5, at 436-37; HODGES, *supra* note 5, at 365.

101. *Alger: Le droit inaliénable du peuple du Sahara Occidental a l'indépendance*, LE MONDE, Mar. 1, 1983, at 3 (translation mine).

102. EL MOUDJAHID (Algiers), June 12, 1983, *cited in* HODGES, *supra* note 5, at 334.

103. *Id.*

104. Mortimer, *supra* note 88, at 171-72.

105. Federation Agreement, Aug. 13, 1984, Libya-Morocco, *reprinted in* XVII AFRICA CONTEMPORARY RECORD: ANNUAL SURVEY OF DOCUMENTS C20-22 (1984-85). The Morocco-Libya Treaty was intended to federate the two countries. It provided for a joint legislature, court, and secretariat under the joint chairmanship of King Hassan and Col. Moammar Khadaffi. *Id.* arts. 3, 5, & 7. The Treaty also called for a common foreign policy and cooperation in economic, social and political matters. *Id.* arts. 8 & 9. It even included a mutual defense clause. *Id.* art. 12. *See generally* John Damis, *Morocco, Libya and the Treaty of Union*, AMERICAN-ARAB AFFAIRS, Summer 1985, at 44-45.

Western Sahara. At the OAU Twentieth Summit held in November, the SADR finally took its seat as the fifty-first member of the organization with little opposition.¹⁰⁶ This, however, led to the withdrawal of Morocco, an important and founding member of the organization.¹⁰⁷ The immediate result of such a decision was the absence from the OAU of one of the two parties to the dispute. This episode also marked the end of the handling of the Western Sahara conflict by the OAU and its displacement to the United Nations.

This shift was in fact sought by the Moroccans themselves although they initially tried to avoid it. The Moroccan Minister of the Interior, Driss Basri, met in Lisbon in April 1985 with Bachir Mustapha Sayed, POLISARIO's main negotiator and second man of the Sahrawi leadership.¹⁰⁸ Again, there was no genuine attempt to negotiate. Rather, the Moroccan side sought to convince the Sahrawis to "get back to their senses and return to reason."

In September 1985, the Non-Aligned Movement (NAM) adopted a resolution at the foreign ministers' conference held in Luanda, Angola, which supported the OAU's Resolution AHG 104 by endorsing its call for direct negotiations.¹⁰⁹ Worse still for Morocco, two months earlier, in July, Mohamed Abdelaziz, the SADR's president, had been elected one of the OAU's vice presidents. King Hassan, accusing the OAU of partiality, decided that the Western Sahara dossier be handled by the United Nations.¹¹⁰ But, clearly, the U.N. arena, especially the General Assembly, was more favorable to the SADR than the Moroccan authorities anticipated, for the notion of direct negotiations between the belligerents, as sought by Algeria and the SADR, appealed to the majority of the members. Even if the question of Western Sahara had not been an important item on the organization's agenda since 1975-76, many resolutions had reaffirmed the "Sahrawis' inalienable right to self-determination and to independence" and that only negotiations between the two parties would create the objective conditions for a return to peace in the region and for a fair and regular referendum.¹¹¹ Nevertheless, through his move, the King hoped that he could regain some of his lost prestige and credibility in the world body.¹¹² Morocco also hoped that, unlike the NAM, the U.N. would circumvent the OAU's Resolution AHG 104 and subscribe to Morocco's view of a referendum plan that would not necessitate direct negotiations with POLISA-

106. See *OAU: Odd King Out*, THE ECONOMIST, Nov. 17, 1984, at 36.

107. *Morocco is First Member to Quit 21-year old OAU*, REUTERS N. EUROP. SVC., Nov. 12, 1984, available in LEXIS, News Library, WIRES file.

108. Ben Amera, *Polisario and Morocco Reach Stalemate in War for Sahara*, REUTERS NO. EUROP. SVC., Apr. 25, 1985, available in LEXIS, News Library, WIRES file.

109. HISTORICAL DICTIONARY OF WESTERN SAHARA, *supra* note 85, at 307-08.

110. BERRAMDANE, *supra* note 21, at 93.

111. *E.g.*, G.A. Res. 28, U.N. GAOR, 37th Sess., Supp. No. 51, at 226-27, U.N. Doc. A/37/51 (1982); G.A. Res. 40, U.N. GAOR, 38th Sess., Supp. No. 47, at 221-22, U.N. Doc. A/38/47 (1983).

112. *The Proposed Referendum*, *supra* note 10, at 198.

RIO, despite the fact that previous U.N. General Assembly resolutions had already done so. The U.N., however, despite Morocco's attempts to avoid the necessity of direct negotiations, gave its unequivocal support to the OAU's plan for direct negotiations, a cease-fire, an interim administration in the occupied territory, and a referendum in the Western Sahara "without any administrative or military constraints under the auspices of the Organization of the African Unity and the United Nations."¹¹³

Although Morocco's policy boomeranged, for the positions of the OAU and the U.N. now coincided, as of early 1986 the U.N. Secretary-General, Javier Pérez de Cuéllar, sought to accommodate the parties to the conflict by offering his good offices to arrange for indirect talks between POLISARIO and Morocco.¹¹⁴ Thus, two series of indirect discussions were held in New York from April 9-15, 1986 and from May 5-9, 1986.¹¹⁵ These separate talks were held in the presence of the president of the OAU's personal envoy.¹¹⁶ The representatives of Algeria and Mauritania were informed of the substance of the talks.¹¹⁷ The U.N. Secretary-General gave the two parties detailed questionnaires on six points relating to the different aspects of the process of the planned referendum.¹¹⁸ The two parties responded to these questions and submitted them to the Secretary-General.¹¹⁹ Of course, this procedure was perfectly in line with Morocco's wishes, in that it prevented the two parties from meeting face-to-face, hence avoiding direct negotiations. Although the United Nations hoped that these indirect talks would eventually result in direct negotiations and lay the conditions for a cease-fire before the holding of a referendum, they merely allowed Morocco to gain time and devise a new strategy. The Secretary-General's visit to Morocco in July 1986 did little to alter Morocco's refusal to hold direct talks with the Sahrawis.

Morocco's resolute opposition to negotiation with the Sahrawis was predicated upon a number of factors: Algeria's "new pragmatism" and the seeming divisions within the Algerian regime on Western Sahara; the Reagan Administration's support for Morocco; and consolidation of the defensive walls.

IV. ALGERIA'S "REVERSAL OF POLICY"

Although the meeting between King Hassan and Chadli Bendjedid in

113. G.A. Res. 50, U.N. GAOR, 40th Sess., Supp. No. 53, at 268-69, U.N. Doc. A/40/53 (1985).

114. *The Proposed Referendum*, *supra* note 10, at 198.

115. BERRAMDANE, *supra* note 21, at 94.

116. *Id.*

117. *Id.*

118. *The Proposed Referendum*, *supra* note 10, at 198.

119. *Id.* The parties' responses are reprinted in Nicole Grimaud, *Le Sahara Occidental: une issue possible?*, MAGHREB-MACHREK, July-Sept. 1988, at 99-100 (Morocco), 104-05 (SADR).

February 1983 did not produce any tangible results, it was described as cordial and warm.¹²⁰ The two leaders agreed to a further meeting to be held in Tunis; however, this never transpired. The fact that the agreed upon meeting in Tunis did not take place was an indication, according to some analysts, that several tendencies existed among policymakers in Algeria.¹²¹ Apparently, a segment of the leadership was favorable to making concessions to Morocco to the detriment of the Sahrawis, whereas another faction was inflexible on the Western Sahara issue.¹²² Further, the good rapport between Hassan II and Bendjedid seemed to inaugurate a new era in Algerian-Moroccan relations despite the absence of diplomatic relations.

Sensing a "turnabout" in Algeria's position, King Hassan agreed to listen to a proposal made by Algerian jurists on a possible personal union between the Sahrawis and Morocco.¹²³ The Algerians had basically acted upon the King's own suggestion: "leave me the stamp and the flag and everything else is negotiable." The Algerians proposed a type of personal union between the Sahrawis and the King whereby Hassan II would be King of Morocco and of Western Sahara. A Moroccan High Commissioner would be stationed in the Sahrawi capital, Al Ayoun. However, Western Sahara would be independent and run its own affairs. Defense and foreign affairs would also be in the hands of the Sahrawis, but with close links to the Moroccans. The Moroccan and Sahrawi flags would be displayed on all buildings.¹²⁴ In May 1985, King Hassan rejected this proposal as not "serious."¹²⁵ The truth, according to POLISARIO officials, is that the Moroccan side did not agree to self-rule by the Sahrawis, in that they refused to allow them to have control over their own defense, foreign affairs, economy, and other administrative functions.¹²⁶

While Algerian diplomacy gave signs of flexibility on Western Sahara, the Moroccan side decided to retrench by seeking the maximum support from its Western allies. The Treaty of Oujda with Libya having caused much strain with its allies—albeit no reduction in military and economic assistance from the United States and France—Morocco sought to regain the favor of Washington and Paris by making a major move. While still president of the Arab League, and president of the Islamic (*Quds*) Committee, the King held direct talks in July 1986 with Israeli Prime Minister Shimon Peres.¹²⁷ Hassan's main goal appeared to be to obtain congressional support in the United States for Morocco's war in the Western Sahara, in the form of

120. *politique du possible*, *supra* note 94, at 411.

121. *Id.*

122. *Id.*

123. *Id.*

124. Interview with Mahmood Abdelfattah, POLISARIO official in Geneva (Mar. 1994).

125. *politique du possible*, *supra* note 94, at 411 (citing a press conference).

126. Interview with high-ranking POLISARIO Official in Madrid (1994).

127. Judith Miller, *Peres and Hassan in Talks, Syria Breaks Moroccan Ties*, N.Y. TIMES, July 23, 1986, at A1.

increased economic and military aid.¹²⁸ Another reason was surely to attempt to prevent a closer rapprochement between Algeria and the United States, following Bendjedid's historic visit to Washington in April 1985.¹²⁹ The Treaty of Oujda, which had compelled Libya to stop forever its material assistance to POLISARIO, was terminated by King Hassan on August 29, 1986.¹³⁰ Yet despite all its political moves, Morocco still could not win the war and remained diplomatically isolated.

In Fall 1986, Algeria continued to lay down the foundations of the Greater Maghreb. Improved relations between Tripoli and Algiers, on the one hand, and Tunis and Tripoli, on the other, led to further isolation of Morocco in the region. Morocco was blamed for being an impediment to Maghrebi integration because of its intransigence over Western Sahara. Algerians argued that a settlement of the conflict based on the principles laid down by the United Nations and the Organization of African Unity resolutions would constitute a great step toward Maghrebi unity.¹³¹ While an appeal was made to Morocco to move in that direction, Algerian policymakers continued to insist that the right to self-determination could only be realized through direct negotiations between the Kingdom of Morocco and POLISARIO in order to institute a cease-fire and to organize a free and regular referendum under OAU and U.N. auspices, without any military or administrative constraints.

In late 1986 and Spring 1987, Morocco was close to finishing the last defensive wall. Algeria viewed with concern the expansion and completion on April 16, 1987 of the sixth wall because it came so near the border with Mauritania, Algeria's powerless ally.¹³² Concerned over possible tension between Morocco and Algeria, and with events in the Near East and the Gulf region, Saudi King Fahd mediated a second meeting between Bendjedid and Hassan II. The gathering took place in the presence of King Fahd himself on May 4, 1987 in the Algerian-Moroccan border-town Akid Lotfi.¹³³ Although the meeting eased tension between the two countries, both sides remained apart as far as conflict in the Western Sahara was concerned. But, due to the King's interest in coming out of his isolation and adhering to the ongoing process of regional integration, the momentum was continued

128. See Jonathan C. Randal, *Hassan, Peres Start Talks in Morocco*, WASH. POST, July 23, 1986, at A1.

129. *Id.*; BERRAMDANE, *supra* note 21, at 187, 265.

130. *Morocco Cancelling Treaty Aimed at Union With Libya*, N.Y. TIMES, Aug. 30, 1986, at 3.

131. BERRAMDANE, *supra* note 21, at 223.

132. Yahia H. Zoubir, *Origins and Development of the Western Sahara Conflict, in INTERNATIONAL DIMENSIONS, supra* note 5, at 1, 6 [hereinafter *Origins and Development*]. See also *Rencontre Hassan II-Mitterrand*, JEUNE AFRIQUE, May 6, 1987, at 17-18; Peter Blackburn, *Concern Grows that Mauritania Will be Drawn into Neighbor's War*, CHRIST. SCI. MON., June 9, 1987, at 27.

133. Jonathan C. Randal, *Algerian, Moroccan Leaders Meet*, WASH. POST, May 5, 1987, at A21.

throughout the year. An exchange of Moroccan and Algerian prisoners held since the two deadly battles of Amgala in 1976 took place immediately after the meeting of the two heads of states.¹³⁴ There is no doubt that the Saudi role was instrumental in inducing Morocco to seek a negotiated settlement of the conflict. There was increasing evidence that the Saudis, who were paying approximately one billion dollars a year to help the king wage his war in Western Sahara,¹³⁵ would use their financial leverage to bring Hassan II to their direction.

The good atmosphere that surrounded the talks in Akid Lotfi could not hide the deep disagreements regarding the Western Sahara conflict. The Sahrawis continued their periodic attacks against the walls and insisted that direct negotiations with the Moroccans must be held before international observers could be sent to the area.¹³⁶ They also maintained that occupying troops should be withdrawn during the holding of the referendum in order to guarantee a free consultation.¹³⁷ The Moroccans, who were eager to soften Algeria's position on Western Sahara and to be part of the process of integration, made appeasing statements, such as the one by Hassan II himself: "If the Sahrawis decide to integrate with Morocco, they would be most welcome. If they decide to secede [*sic*], we would be the first ones to open an embassy in their capital."¹³⁸ Feeling that this was a constructive approach, the Sahrawi leaders were hopeful that the integration process underway would include them and that a possible solution would be found within that framework.¹³⁹ Successive events have shown this to be a rather naive assessment of the King's policy, for Hassan II has never considered the possibility of relinquishing Western Sahara. Morocco has never had any intention of allowing the holding of the referendum decided upon by the United Nations, and agreed to by Morocco, unless it was sure to win.

In order to avoid being isolated in the region, Morocco began to readjust its diplomacy to regional realities. One of the King's major "concessions" in the summer of 1987 was his statement, just before his trip to England, that conflict in the Western Sahara was between Morocco and POLISARIO and not with Algeria as he had hitherto claimed.¹⁴⁰ This recognition did indeed mark a departure from his earlier position which blamed Algeria for the war and which described the Sahrawis as "mercenaries" created by Morocco's eastern neighbor.¹⁴¹ The continuous dialogue between Algeria and Morocco

134. BALTA, *supra* note 19, at 234.

135. Daniel Volman, *The Role of Foreign Military Assistance in the Western Sahara War*, in INTERNATIONAL DIMENSIONS, *supra* note 5, at 151, 155-56.

136. BALTA, *supra* note 19, at 234.

137. *Id.*

138. *Id.*

139. Interview with a high-ranking POLISARIO official in New York (1989). See also *Le Polisario ouvre le feu sur . . . le référendum*, JEUNE AFRIQUE, July 29, 1987, at 34.

140. BALTA, *supra* note 19, at 235.

141. *Origins and Development*, *supra* note 132, at 7.

led to the re-establishment of diplomatic relations on May 16, 1988.¹⁴² For Algerians, the re-establishment of these ties was aimed at correcting an anomalous situation. Morocco, in contrast, decided to renew diplomatic relations with Algeria not only to break the kingdom's isolation on the Maghrebi and African scene, but also to isolate the Sahrawis, whose cause King Hassan hoped would be sacrificed on the altar of Maghrebi integration. Some observers believed that the construction of the greater Maghreb had taken precedence over the question of Western Sahara.¹⁴³ From a Moroccan point of view, Algeria's rapprochement with Morocco meant that Morocco now had no need to negotiate with the Sahrawis, for Algeria was allegedly abandoning its "client."

Sahrawi leaders were initially quite nervous about the turn of events.¹⁴⁴ But their reaction, after receiving assurances from the Algerians, was positive because they hoped that renewed diplomatic relations and better rapport between Algeria and Morocco would compel Hassan II to seek a political solution.¹⁴⁵ In fact, the Algerian-Moroccan joint communiqué was clear as to the necessity of a political settlement of the conflict:

[E]ager to promote the success of international efforts undertaken to hasten the process of good offices for a just and definitive solution to the Western Sahara conflict through a free and regular referendum for self-determination held without any constraints whatsoever and with utmost sincerity . . . [the two countries] have decided to reestablish diplomatic relations.¹⁴⁶

Due to the seeming divisions within the Algerian regime regarding the issue, many observers and diplomats speculated about a "fix" between Algeria and Morocco concerning Western Sahara, whereby a face-saving formula would be agreed upon to make the Sahrawi territory an autonomous region of Morocco. This scenario was played up following King Hassan's interview with the French daily, *Le Monde*, published on August 3, 1988. According to the King's formula, the Sahrawis would be granted autonomy if they decided to remain Moroccan. At the same time, he made it very clear that

142. EL MOUJAHID (Algiers), May 17, 1988. See also *Algeria to Resume Ties with Morocco*, N.Y. TIMES, May 17, 1988, at A11.

143. Interviews with Western and U.S. Diplomats in Washington, D.C. (Summer 1988).

144. POLISARIO issued a communiqué six hours after Algeria and Morocco announced the resumption of diplomatic relations, reaffirming that a solution to the Western Sahara conflict could only be had through a referendum, and claiming that its guerrillas had attacked a Moroccan outpost near the Mauritanian border, killing ten Moroccan soldiers. *Polisario Reports Fresh Attack as Morocco-Algeria Resume Ties*, REUTERS, May 17, 1988, available in LEXIS, News Library, ARCNWS file. Morocco denied that such an attack ever occurred. *Saharan Guerrillas Say They Attacked Morocco, Rabat Denies It*, REUTERS, May 18, 1988, available in LEXIS, News Library, ARCNWS file.

145. *Accord Reached*, AFRICA NEWS, May 30, 1988, available in LEXIS, News Library, ARCNWS file.

146. EL MOUDJAHID (Algiers), May 17, 1988 (translation mine). See also *Agreeing to Agree*, AFRICA NEWS, May 30, 1988, available in LEXIS, News Library, ARCNWS file.

he was totally opposed to Sahrawi independence.¹⁴⁷ In other words, there would be no negotiation on this issue. All the Sahrawis could expect was some sort of vague autonomy under full Moroccan sovereignty. The door to genuine negotiations with the Sahrawis was basically closed. There is no doubt that Algeria's attempt to build a united Maghreb without excluding Morocco, and its failure to include the SADR in the process convinced Morocco that negotiating with the Sahrawis was pointless, for the major supporter of the cause was showing signs of weakness. But, at the same time, Morocco had to give the impression that it was seeking a political solution. Thus, in July 1988, once again through Saudi mediation, secret talks between Sahrawis and Moroccans were held in Taëf, Saudi Arabia.¹⁴⁸ The problem, though, is that they were conducted at a very low level. According to a POLISARIO official, the Moroccans had promised that a member of the royal family would meet with the Sahrawi "Elders" (*Shuyukhs*). "A member of the [Moroccan] royal family did come; he said: 'you are meeting, that's good!' Then he left."¹⁴⁹ Unquestionably, the main Moroccan objective was to avoid embarrassing the Algerians by creating the illusion that a peace process was underway and that Morocco was fulfilling the pledge it made as a precondition for the renewal of diplomatic relations with Algeria.

As indicated earlier, Morocco's analysis of Algeria was based on the perception that there existed divisions within the Algerian leadership between radical and moderate factions. The radical faction was pro-Sahrawi and was thought to be inflexible on the question. It was also opposed to better ties with Morocco. The moderate or liberal faction, represented by President Bendjedid, was believed to be more sympathetic to Morocco's claims. The Moroccans believed that all this faction needed was a face-saving solution to abandon all support for POLISARIO. In effect, if there was a face-saving solution, it came from the United Nations on August 11, 1988, when Secretary-General Javier Pérez de Cuéllar proposed a peace plan to the parties in conflict, Morocco and the Sahrawis.¹⁵⁰ The plan offered, among other things, a cease-fire and a referendum that would allow the Sahrawis to exercise their right to self-determination.¹⁵¹ The two parties accepted the peace proposal, albeit with reservations.¹⁵² The acceptance of and commitment to the peace proposal, however, did not mean an end to the conflict. In September 1988, POLISARIO armed forces launched several attacks

147. *Un entretien avec Hassan II*, LE MONDE, Aug. 3, 1988, at 1.

148. Frances Ghiles, *Polisario Weighs Up War and Compromise with Hassan*, FIN. TIMES (London), Oct. 13, 1988, at 5.

149. Interview in Geneva (Mar. 23, 1994).

150. Ted Morello, *U.N. Leader Offers Plan on Western Sahara*, WASH. POST, Aug. 12, 1988, at A23.

151. *Id.*

152. Paul Lewis, *Sahara Foes Move to End Their War*, N.Y. TIMES, Aug. 31, 1988, at A7.

against Moroccan positions.¹⁵³ Their objective was clearly to demonstrate that POLISARIO was an independent force to be reckoned with and that Moroccan dialogue, if not negotiations, with POLISARIO was as important as with Algiers. Therefore, from POLISARIO's point of view, direct negotiations were a necessary condition for a genuine peace process. Although they rejected POLISARIO's view on direct negotiations, Moroccans came to accept their opponent as a reality. They no longer blamed Algeria for POLISARIO attacks on Morocco.

Even though there might have been divisions within Algeria's leadership on the Western Sahara issue, it is clear that those who allegedly sought to abandon POLISARIO failed to gain the upper hand, for POLISARIO's attacks on Moroccan positions would not have been possible without at least tacit approval from Algeria. Against mounting speculations about Algeria's new attitude toward POLISARIO, President Bendjedid made reference to the issue in an important speech—against the so-called radicals opposed to his domestic liberal reforms—given on September 19, 1988:

We have been clear [with the Moroccans] from the beginning. In no way will Algeria ever renounce her fundamental principles regarding the defense of just causes and peoples' right to self-determination. This was understood by our Moroccan brothers. We believe that the Sahrawi question is a just cause.¹⁵⁴

Yet, despite these statements and POLISARIO attacks, Moroccans still believed that negotiations were unnecessary and that sooner or later the Sahrawi cause would die a natural death. This is why they thought that the mere acceptance of holding a referendum in Western Sahara would satisfy Algeria's leaders and would make it easier for its neighbor to eventually drop the issue altogether. This also explains why Moroccan officials, although they accepted the principle of a referendum, continued to insist that Western Sahara would remain Moroccan and that the referendum was simply a "procedure and an episode."

V. ALGERIA'S INTERNAL TURMOIL AND ITS REPERCUSSIONS ON THE QUESTION OF WESTERN SAHARA

In October 1988, a series of violent urban disturbances erupted throughout Algeria.¹⁵⁵ King Hassan decided to extend support to Algeria's presi-

153. Edward Cody, *W. Sahara War Nears an End; Morocco, Guerrillas Agree to Peace Plan*, WASH. POST., Sept. 25, 1988, at A1.

154. EL MOUDJAHID (Algiers), Sept. 21, 1988 (translation mine).

155. See, e.g., F.B.I.S.-N.E.S., Oct. 5-12, 1988. On the causes of unrest in Algeria in 1988, see Michael Ross, *State of Siege Over—But Algeria Still Viewed as "a Social Tinderbox"*, L.A. TIMES, Oct. 14, 1988, at 10. See also Yahia H. Zoubir, *Stalled Democratization of an Authoritarian Regime: The Case of Algeria*, 2 DEMOCRATIZATION 109 (1995); Robert A. Mortimer, *Algeria After the Explosion*, 89 CURRENT HIST. 161 (1990).

dent¹⁵⁶ because, unlike his predecessor, Houari Boumédiène, Bendjedid was perceived as “a good man . . . having no personal ambitions and desirous to live in peace with us.” During the same period, Algerians maintained their position on the Western Sahara issue and insisted on the necessity for direct negotiations between Morocco and POLISARIO and reiterated their call for a referendum which should take place under conditions that precluded Moroccan administrative and military intimidation. In the same month, the United Nations Fourth Committee on Decolonization had voted overwhelmingly in favor of Resolution 43/33 which called for direct negotiations between POLISARIO and Morocco as the best avenue for bringing about a cease-fire to create the necessary conditions for a peaceful and fair referendum for self-determination for the people of Western Sahara without any administrative or military constraints under the auspices of the Organization of African Unity and the United Nations.¹⁵⁷ However, the Moroccans felt that there was even less need for direct negotiations now because of the mediation provided by the U.N. Secretary-General. The King himself continued to display his seemingly contradictory discourse on the Western Sahara:

We are about to embark on a referendum and I know best the atmosphere surrounding this referendum . . . I say to those [i.e., the Sahrawis] who went astray and lost their way that they should fear God for the sake of the homeland and kinship. They should realize that the referendum on which we embark with all our determination and strength and our belief in our right *will only enhance the right that has already been confirmed for years and centuries.*¹⁵⁸

Following this provocative statement, King Hassan made a tactical, highly publicized move whose aim was to serve several functions. In December 1988, the King declared to the French media that he would agree to a meeting with Sahrawi nationalists, including representatives of POLISARIO.¹⁵⁹ But, again, a close analysis of the language used by the King demonstrates his total—albeit consistent—opposition to genuine negotiation:

Question: You have agreed to the holding of a referendum in the [Western] Sahara. Would you give up this territory if you

156. *Bendjedid Receives Messages*, F.B.I.S.-N.E.S., Oct. 12, 1988, at 12.

157. U.N. GAOR 4th Comm., 43d Sess., Agenda Item 18, U.N. Doc. A/C.4/43/L.2 (1988). See also G.A. Res. 33, U.N. GAOR, 43d Sess., Supp. No. 49, at 236-37, U.N. Doc. A/43/49 (1988).

158. *King Hassan II Addresses Green March Anniversary*, F.B.I.S.-N.E.S., Nov. 7, 1988, at 15 (emphasis added).

159. *Hassan II au Polisario: “Les portes de mon palais sont ouvertes,”* LE POINT, Dec. 12, 1988, at 43 [hereinafter “*Les portes de mon palais*”]. In English, see Paul Delaney, *Hassan of Morocco Agrees to Talk with Western Saharan Guerrillas*, N.Y. TIMES, Dec. 28, 1988, at A1.

lost?

Answer: If the outcome is negative, Morocco will draw the necessary consequences.

Question: Wouldn't it be preferable that there be agreement between the two parties?

Answer: I have always wished that because this referendum would be painful. Families are split in two. This is why I have reached out to those [i.e., Sahrawis] on the other side [i.e., in Algeria]. I have said and I repeat: "the doors of my palace are open." I am ready to listen to everyone, to hear their grievances and to know their wishes for this part of the territory [Western Sahara]. I will guarantee everyone's safe passage. *I am willing to discuss, but not to negotiate.*

Question: Are you willing to meet with them if they come as Moroccan subjects?

Answer: Not even, not even. They can come as POLISARIO, but they must come to me.

Question: Is a Sahrawi State conceivable?

Answer: Nobody talks about independence anymore. That would be a cancer for Mauritania, Algeria, and Morocco.¹⁶⁰

The tactical nature of this statement is unmistakable. Yet a determination of the reasons which motivated the King to make such a decision is critical. There are at least five considerations which have impelled the King to agree to meet with POLISARIO officials. First, the King may have been convinced that the value of the new relationship with Algeria was worth a small "concession," not least because the Maghrebi summit scheduled to take place in February 1989 in the Kingdom of Morocco would be jeopardized unless Algeria's demand for direct talks between Morocco and POLISARIO was accepted. Second, Rabat's categorical refusal to comply with U.N. and OAU resolutions was upsetting to many governments. Third, French President, François Mitterrand had pleaded with the King during the Franco-African summit held a month earlier to speed up the "peace process." Fourth, the United States had also shown increasing interest in seeking a settlement that would promote stability in the region. Fifth, the King was hopeful that he might be able to divide the Sahrawi leaders who were becoming increasingly weary as a result of many years of struggle and would thus be more amenable to a compromise with Morocco.

160. "*Les portes de mon palais*", *supra* note 159, at 43 (emphasis added).

VI. POLISARIO'S MEETING WITH KING HASSAN¹⁶¹

The two meetings held between King Hassan and the three POLISARIO representatives on January 4 and 5, 1989, were the most promising of all encounters between Moroccans and Sahrawis.¹⁶² The importance of these meetings stemmed from the fact that the King himself—and he was the only “negotiator”—chaired the meeting. This fact was also important because he alone and no one else in Morocco can make any consequential decision on Western Sahara.

POLISARIO leaders welcomed the direct talks with King Hassan which, they claimed, would lead to “the active phase” of the peace process and allow the two sides to “move on, hand in hand, to a free and fair referendum on self-determination among the people of the Western Sahara.”¹⁶³ The Sahrawi delegation was composed of three top officials: Bachir Mustapha Sayed, Mahfoud Ali Beïba, and Brahim Ghali. They carried with them a letter written by the SADR's President Mohamed Abdelaziz on the SADR's stationary in which he asserted that the three were mandated to negotiate as plenipotentiaries. The three were accompanied to the doorsteps by the King's closest cabinet members, Abdellatif Filali, Driss Basri, and Ahmed Réda Guedira. The three Moroccan officials then sat in the waiting room until the meeting between the King and the POLISARIO representatives ended. This occurred twice, with the only difference that another Moroccan official, Karim Lamrani, accompanied the Sahrawi delegation to the doorsteps. The King is said to have told the delegation: “I know you Sahrawis, you don't like constraints. Despite all the investments I have made in the Territory, I haven't succeeded in winning your hearts. There has been too much bloodshed, we need to put an end to this conflict.” Although the Sahrawis have reported only bits from the talks they held with the King, they reported that Hassan II was very concerned about his succession and that he did not want to leave a “time bomb” for his son, the crown prince. Despite Morocco's insistence that the King “only talked” with the Sahrawi representatives, the substance of their discussions could well be described as quasi-negotiation—or perhaps prenegotiation—since not only were the details of the referendum raised, but also arrangements for a truce and an exchange of prisoners. Contrary to some reports, there was no agreement on autonomy under Moroccan sovereignty. What is certain is that the King promised that

161. This part is reconstituted from various discussions held in 1989 and in 1994 with POLISARIO officials, including SADR's president, Mohamed Abdelaziz, and one of the three members and principal negotiator, Bachir Mustapha Sayed, who met with King Hassan in February 1989.

162. Jonathan Clayton, *Morocco and Polisario Plan More Meetings After Breaking Ice*, REUTERS, Jan. 5, 1989, available in LEXIS, News Library, ARCNEWS file.

163. ALGÉRIE PRESSE SERVICE, Jan. 9, 1989. See also *Polisario Official Optimistic about Marrakesh Talks with King Hassan*, BBC SUMMARY OF WORLD BROADCASTS, Jan. 12, 1989, available in LEXIS, News Library, ARCNEWS file (interview with Malainine Ould Seddik, member of the Polisario Front Political Bureau).

he would meet again with the Sahrawis.

The King's immediate objective in agreeing to hold the talks with the Sahrawis was to appease the Algerians and to guarantee the success of the upcoming Maghrebi Summit. The fervor over Maghrebi unity led to a tacit agreement between Algeria and Morocco to leave aside the Sahrawi question. From the Algerian perspective, this was not a concession because the U.N. was in charge of the dossier.

Having achieved his objective, King Hassan exploited the regional developments to his own benefit by stating very bluntly that he had never met with Sahrawi nationalists, but "it is Moroccans who have gone astray that I met in the hope that they would be put back on the right path. Never were they received as members of the so-called POLISARIO."¹⁶⁴ Following his meeting with the Sahrawis, King Hassan admitted that he should have met with them earlier.¹⁶⁵ At the same time, he insisted that Western Sahara is Moroccan territory. He argued that the referendum would be "bothersome" even to POLISARIO—the implication being that the result was a foregone conclusion—and that he had agreed that it should be held only to avoid having Morocco be put on the defensive and accused of expansionism. Once again, he reiterated his promise to the Sahrawi nationalists that "when they have reintegrated their homeland [*sic*], they would benefit, like the other Moroccan provinces, from the regionalization plan which has been envisaged."¹⁶⁶

The King's attitude was predicated upon both domestic and international considerations. On the domestic front, assuming there was a willingness to resolve the conflict politically regardless of the outcome of the referendum, Hassan still had to face the opposition parties—who often, for tactical reasons, take an uncompromising position on the question—and the military. Both would use the issue as a lever to extract corporatist demands from the Palace. Hassan's decision not to involve any members of his Cabinet in the talks with POLISARIO indicates not only that solving the Western Sahara issue is his own affair, but also that he wants to use it for political ends. In order to prevent the opposition from raising any doubts as to his determination to keep the Territory, the King declared immediately after his meeting with the three Sahrawi nationalists that Morocco "has not given an inch of ground."¹⁶⁷ Externally, the King perhaps hoped that Algeria would help him find a face-saving formula. By reestablishing and consolidating relations with Algeria, feigning to begin negotiations with the Sahrawis, and excluding the issue from the bilateral ties with Algeria, the King succeeded in forcing

164. AGENCE FRANCE PRESSE, Jan. 16, 1989. Cf. Yehuda Litani, *The King and the Intifada*, JERUSALEM POST, Jan. 27, 1989, available in LEXIS, News Library, ARCNWS file.

165. *Le roi Hassan II invite le Polisario à "bénéficier du plan de régionalisation,"* LE MONDE, Jan. 13, 1989, at 3.

166. *Id.*

167. François Soudan, *Hassan II/Polisario: les secrets d'une rencontre*, JEUNE AFRIQUE, Jan. 25, 1989, at 34.

the Maghrebi States to put the Sahrawi issue on the back burner.

King Hassan's unwillingness to renew talks with the Sahrawis provoked POLISARIO in March 1989 to end the unilateral cease-fire it had declared for the whole of February as a goodwill gesture.¹⁶⁸ However, it was in that very month that the Union du Maghreb Arabe (UMA) between Algeria, Libya, Mauritania, Morocco, and Tunisia had been inaugurated at their summit meeting in Marrakech after more than three decades of pan-Maghreb rhetoric.¹⁶⁹ In so far as the King had achieved his goal of securing the creation of the UMA without the participation of the SADR, it began to appear as if the Sahrawi state might become sufficiently ignored and isolated as to die what the Moroccans hoped would be a natural death. This explains why Morocco reneged on the pursuit of negotiations as the best avenue for achieving a solution. For instance, on September 1, 1989, King Hassan promised President Bendjedid that he would hold a new round of talks with POLISARIO before his forthcoming trip to Spain, only to declare bluntly three weeks later that this was unnecessary, for "there is nothing to negotiate because the Western Sahara is Moroccan territory."¹⁷⁰ What is rather ironic is that consistent denials by Moroccans that they had ever agreed to a second round of talks with POLISARIO did not stop them from arguing that the Sahrawis' continued military operations had put an end to the "planned meeting."¹⁷¹ This only confirmed Moroccan opposition to direct negotiations and revealed their promises to hold such negotiations as mere tactical maneuvers. In fact, when, in the summer of 1990, the SADR's president, Mohamed Abdelaziz, announced that direct talks were soon to be held, the Moroccan Minister of the Interior, Driss Basri denied the statement, arguing that U.N. Secretary-General Pérez de Cuéllar had been asked to use his good offices in order to conduct indirect negotiations between the interested parties in an attempt to find the best means to hold a referendum.¹⁷²

VII. THE U.N. PEACE PLAN: PEACEMAKING OR WARMAKING?

The peace plan proposed by the Secretary-General and accepted "in principle" by both sides to the conflict—although it offered no timetable as to the dates of its implementation—constituted the basis upon which the referendum was to take place. It was rather surprising that Morocco accepted it, for the latter had, up to that time, been reluctant to view POLISARIO as

168. *No New Talks*, AFRICA NEWS, Apr. 3, 1989, available in LEXIS, News Library ARCNWS file.

169. *North Africa: Five Heads of State Launch Arab Maghreb Union*, INTER PRESS SERVICE, Feb. 17, 1989, available in LEXIS, News Library, ARCNWS file.

170. *Morocco's Discomfiture*, WEST AFRICA, Oct. 2-8, 1989, at 1666.

171. *Expected Meeting in Rabat Aborted by Polisario Attack*, AL SHARQ AL AWSAT (London), Oct. 10, 1989 (original in Arabic).

172. *Morocco Denies It Will Talk to Polisario Guerrillas*, REUTERS, July 4, 1990, available in LEXIS, News Library, ARCNWS file.

an independent party to the conflict. There is no doubt that the King accepted the peace plan because he knew that the ambiguities in the plan could help him give it his own interpretation and force POLISARIO and the U.N. to adjust to his own understanding of the plan. The main reason he agreed to it was also determined by the cost of the war which was becoming increasingly unbearable for the Moroccan economy.¹⁷³ Further, the fact that more than seventy states had recognized the SADR could not leave the King oblivious to such a reality. No country, no matter how close to Morocco, endorsed the latter's claim over the Territory—at least not publicly. The mood in the U.N. was favorable to adopting and eventually implementing the OAU's proposals for resolving the dispute. For its part, POLISARIO, despite its many military successes, could not hope to bring Morocco to the table by defeating the estimated 120,000-150,000 Moroccan troops entrenched in Western Sahara. The prospect of direct talks—especially after the secret contacts in Taëf—coupled with the resumption of Algerian-Moroccan ties, compelled POLISARIO to also subscribe to the Secretary-General's peace plan. Sahrawi officials who had constantly urged Morocco to negotiate hoped that the contacts in Taëf and the resumption of Morocco's ties with Algeria, POLISARIO's main benefactor, were a sign that the King may have altered his position on direct talks.¹⁷⁴ As later events will demonstrate, this assessment was totally groundless.

In June 1990, the U.N. Secretary-General introduced an elaborate plan for the factual transition of the former Spanish colony to either independence or internationally sanctioned integration to Morocco. The plan included the modalities of a cease-fire, phased troop withdrawal, repatriation of refugees, the exercise of transitional authority, a timetable for the process, the mandate of the Identification Commission to screen eligible voters, the role of the Special Representative, etc.¹⁷⁵ The U.N. Security Council unanimously approved the Secretary-General's undertaking and called on both Morocco and POLISARIO to "co-operate fully" with him.¹⁷⁶

Strengthened by his mandate, Pérez de Cuéllar traveled to Geneva in the same month in the hope of convening the two parties and persuading the Moroccans to hold direct talks with the Sahrawi nationalists. On July 5, 1990, he declared that there would, indeed, be a direct meeting between the Moroccan government and a delegation of the POLISARIO Front.¹⁷⁷ De Cuéllar was, no doubt, hopeful that the meeting he had just succeeded in arranging between the Iranians and the Iraqis would have a spill over effect.

173. See *Low-Intensity Intervention*, *supra* note 99, at 70-72 (discussing the impact of the escalating cost of the war on the Moroccan political economy).

174. Interview with Sahrawi Officials (1990).

175. *The Situation Concerning the Western Sahara: Report of the Secretary-General*, U.N. SCOR, 45th Sess., at 14-17, U.N. Doc. S/21360 (1990).

176. S.C. Res. 658, U.N. SCOR, 45th Sess., U.N. Doc. No. S/Res/658 (1990).

177. Claude Regin, *U.N. Chief Determined to Host Direct Polisario-Morocco Talks*, REUTERS, July 5, 1990, available in LEXIS, News Library, ARCNEWS file.

But, despite five days of intensive efforts, the Secretary-General failed to convince the Moroccan side to meet and negotiate with POLISARIO officials under U.N. auspices. Another opportunity to build upon the potential momentum created by the January 1989 meeting was thus missed. Nevertheless, thirty-eight tribal elders, nineteen from Al Ayoun (under Moroccan control) and nineteen from Tindouf and the liberated sections of the Territory (under POLISARIO authority) gathered to examine the census rolls.¹⁷⁸ The Elders were seemingly members of the tribal council (*djemaa*), which existed under Spanish colonial rule. Even in this meeting, a controversy arose as to the exact identity of one of the Elders whom POLISARIO accused of being a member of the Moroccan interior ministry.¹⁷⁹ Indirect talks did, however, take place whereby the two sides agreed on the question to be asked in the referendum: independence or integration with Morocco. They also concurred on who should be allowed to vote, namely, those whose names figured in the 1974 Spanish census. The plan stipulates that the Identification Commission's task was to "implement the agreed position of the parties that all Western Saharans counted in the 1974 census undertaken by the Spanish authorities and aged eighteen or over will have the right to vote, whether currently present in the Territory or outside as refugees or for other reasons."¹⁸⁰

There were also pending problems regarding the presence during the vote of the tens of thousands of Moroccan troops and administrators in the Territory. The Secretary-General was, however, hopeful that these problems would be solved through his own negotiations with the Moroccan authorities. The U.N. operation as a whole was named MINURSO, the French acronym for the United Nations Mission for the Referendum in the Western Sahara. It was composed of 375 members (military and medical personnel) whose task was to supervise a referendum¹⁸¹ in a territory the size of Colorado, or half the size of France.

In 1991, in an effort to update certain administrative aspects of his plan, Pérez de Cuéllar introduced elements which were exploited by Morocco to add new voters favorable to Morocco, thus stalling the peace process altogether. In paragraph 20 on the identification and registration of voters, the Secretary-General declared that,

The [Identification] Commission's mandate to update the 1974 census will include (a) removing from the lists the names of persons who have since died and (b) considering applications from persons who claim the right to participate in the referendum on the grounds that they are Western Saharans

178. *Western Sahara: One Last Colony*, THE ECONOMIST, July 14, 1990, at 41.

179. *Id.*

180. *The Situation Concerning Western Sahara: Report of the Secretary-General*, U.N. SCOR, 45th Sess., at 9, U.N. Doc. S/21360 (1990).

181. *Report of the Secretary-General on the United Nations Mission for the Referendum in Western Sahara*, U.N. SCOR, 47th Sess., U.N. Doc. S/23662 (1992).

and were omitted from the 1974 census.¹⁸²

Clause (b) of this paragraph offered King Hassan a golden opportunity to turn the referendum to his own advantage. In August 1991, he submitted a list of 120,000 additional voters to the 1974 census.¹⁸³ Morocco then began moving 170,000 individuals, claiming they were Sahrawis, into Western Sahara.¹⁸⁴ This has been referred to as the second "Green March."¹⁸⁵ This constituted such a violation of the peace plan that Johannes Manz, the Secretary-General's representative, a Swiss high-ranking civil servant known for his competence and high integrity, resigned from his position in December 1991.¹⁸⁶ In a "personal and confidential" letter he wrote to Pérez de Cuéllar on December 13, 1991, he made a number of recommendations. In one of them, Manz insisted that the U.N. propose "an agreement which both Parties can accept, even in defeat. Such an agreement can only be sought and reached at the negotiating table, based on a model which would guarantee an outcome with neither a clear winner nor a clear loser."¹⁸⁷ This was one of the most realistic formulations, which POLISARIO and the international community could easily accept. More importantly, Johannes Manz sought to avoid complicating the peace process by showing a firm U.N. position on the military violations of the cease-fire established since September 6, 1991. Most of the military violations were Morocco's. It had also committed non-military violations. Regarding the latter, Manz stated:

Concerning the non-military violations, the movement of unidentified persons into the Territory, the so called 'Second Green March,' constitutes, in my view, a breach of the spirit, if not the letter, of the Peace Plan. It was, therefore, with great sadness that I took note of the contents of your letter on this subject to the King of Morocco dated November 18, which was sent without my prior consultation or my knowledge, although I had made very clear recommendations on this matter.¹⁸⁸

Instead of pursuing Manz's recommendations, Pérez de Cuéllar succumbed to Morocco's increasing demands for the inclusion of additional voters. On December 19, 1991, less than two weeks before his term in office

182. *The Situation Concerning Western Sahara: Report by the Secretary-General*, U.N. SCOR, 46th Sess., para. 20, U.N. Doc. S/22464 (1991).

183. Francis Ghiles, *Fears over UN's Saharan Peace Deal*, FIN. TIMES (London), Nov. 6, 1991, at 4.

184. *Id.*

185. *Sahara Polisario Accuses Morocco of Planning New Green March*, BBC SUMMARY OF WORLD BROADCASTS, Sept. 21, 1991, available in LEXIS, News Library, ARCNEWS file.

186. *U.N.'s Special Western Sahara Envoy to Switch Jobs*, AGENCE FRANCE PRESSE, Dec. 19, 1991, available in LEXIS, News Library, ARCNEWS file.

187. Confidential letter from Johannes Manz to Javier Pérez de Cuéllar, Secretary General of the United Nations (Dec. 13, 1991) (on file with the author).

188. *Id.*

was due to expire, Pérez de Cuéllar submitted a final report on the question.¹⁸⁹ In part VII of the annex to the report he recommended, in essence, that eligibility be extended to include people who can show they had resided in the Western Sahara continuously for a period of six years before December 1974 or who had lived there intermittently over a period of twelve years before Spain's withdrawal. Johannes Manz resigned the following day. On December 31, the U.N. Security Council refused to endorse the Secretary-General's report. Although France attempted to convince members of the council to endorse Pérez de Cuéllar's proposals, the United States was unwilling to accept them. Instead of endorsing this report, the Security Council adopted a resolution on December 31, 1991, the last day of the Secretary-General's term in office, stating that the council "approves" his efforts but only "welcomes" the text of the proposal.¹⁹⁰ The Security Council correctly understood that de Cuéllar's report not only ran against the efforts of the Identification Commission, but was undoubtedly a unilateral modification of the original peace plan and represented the will of only one side to the conflict (Morocco) to the detriment of POLISARIO and even the co-sponsor of the peace plan, the OAU. Therefore, the Council's resolution meant that the new Secretary-General, Boutros Boutros-Ghali, would have to develop a proposal on voter eligibility acceptable to both sides.

There is no doubt that at that stage, the process had already been undermined. The French had supported Pérez de Cuéllar's proposals as a means to finish up with the Western Sahara question and to strengthen Morocco's stability at a time when the legislative elections in Algeria were favorable to the Islamists. The prospect of an Islamist victory, from a French perspective, would have created a period of great instability in Algeria. The risk of a spill over into Morocco being almost certain, it became logical for the French to strengthen the Moroccan monarchy by offering it a victory in Western Sahara, thus consolidating the King's legitimacy and at the same time allegedly creating a bulwark against the spread of Islamic fundamentalism.

It must be pointed out at the onset, from an objective point of view, that the new Secretary-General, Boutros Boutros-Ghali and his Special Representative, Sahabzada Yaquub Khan (who was eventually replaced by Erik Jensen), have, for reasons beyond the scope of this article, acted in such a way as to be interpreted by many as an attempt to align the U.N. position with the Moroccan stance.¹⁹¹ Ever since they took office, they seem to have progressively favored one side to the conflict at the expense of the other. POLISARIO, in particular, has emphasized the absence of objectivity in this

189. *Report of the Secretary-General Concerning the Situation in the Western Sahara*, U.N. SCOR, 46th Sess., U.N. Doc. S/23299 (1991).

190. S.C. Res. 725, U.N. SCOR, 46th Sess., U.N. Doc. S/RES/725 (1991).

191. See Yahia H. Zoubir & Anthony G. Pazzanita, *The United Nations' Failure in Resolving the Western Sahara Conflict*, 49 MIDDLE EAST J. 614, 620-27 (1995).

protracted conflict.¹⁹² Indeed, some of the actions of the Secretary General and his Special Representative may explain why Morocco has not found it in its interest to enter any serious negotiations with POLISARIO.

In November 1992, a scheduled meeting of tribal chiefs in Geneva failed to convene. On January 26, 1993, Boutros Boutros-Ghali issued his update report on the situation concerning the Western Sahara. After outlining the major areas of contention between the two parties regarding the eligibility criteria, the Secretary-General presented three broad options as possible ways of resolving the dispute:

- (a) Continuation, and if possible, intensification of talks. It is my considered opinion, however, that the chances for success under this option are very slim;
- (b) Immediate implementation of the settlement plan on the basis of the instructions for the review of applications for participation in the referendum appearing in the annex to my predecessor's report of 19 December 1991 (S/23299). This may mean that the implementation would have to proceed without the cooperation of one of the parties;
- (c) A third option would be to adopt an alternative approach not based on the settlement plan.¹⁹³

With France's backing, Boutros-Ghali was hopeful that option (b) would be adopted as a U.N. Security Council resolution. The United States' preference for option (a), with draft propositions by Spain and New Zealand, led to the adoption on March 2, 1993 of U.N. Security Council Resolution 809, which stressed the necessity of ensuring the full cooperation of both parties for the implementation of the Settlement Plan, invited "the Secretary-General and his special representative to intensify their efforts, with the parties, in order to resolve the issues . . . in particular those relating to the interpretation and application of the criteria for voter eligibility."¹⁹⁴ It also invited the Secretary-General "to make the necessary preparations for the organization of the referendum of self-determination of the people of Western Sahara and to consult accordingly with the parties for the purpose of commencing voter registration on a prompt basis starting with the updated lists of the 1974 census."¹⁹⁵

The report was followed in June by a tour of the region by Boutros-Ghali. During his talks with the belligerents, he proposed a "compromise" regarding the criteria for eligibility, which in fact was little more than to repeat the criteria of his predecessor and the ones he had himself already

192. *Id.*

193. *The Situation Concerning the Western Sahara. Report by the Secretary-General*, U.N. SCOR, 48th Sess., at 9, U.N. Doc. S/25170 (1993).

194. S.C. Res. 809, U.N. SCOR, 48th Sess., at 2, U.N. Doc. S/RES/809 (1993).

195. *Id.*

proposed in his previous reports.¹⁹⁶

U.N. Security Council Resolution 809 had the merit of encouraging negotiations. The idea of direct talks gained more ground and seemed to be accepted by both parties. By mid-July, direct talks, under U.N. auspices, were held in the Sahrawi capital of Al Ayoun.¹⁹⁷ Behind the scenes, the United States had used its weight to induce Morocco to participate in the upcoming "historic" event and Algeria had encouraged POLISARIO to be forthcoming. The POLISARIO negotiating team was composed of eleven representatives, six of whom occupied important positions in the POLISARIO and SADR structures. The U.N. was reassured that the Moroccan delegation would be headed by Ahmed Senoussi, the King's U.N. representative in New York and by Mohamed Azmi from the ministry of the interior. The objective of the meeting, as contained in the letter sent by the Secretary-General to the negotiators, was to overcome the differences on the criteria for identifying the electoral body. The talks, however, ended in failure because the two protagonists came with totally different agendas. The POLISARIO representatives came to the meeting in the hope of negotiating in order to break the deadlock and speed up the process for the holding of a referendum. The Moroccans maintained their approach: in order to avoid giving any legitimacy to POLISARIO, no Moroccan official would be mandated to negotiate. Ahmed Senoussi did not direct the discussions. The leading "negotiator" in the Moroccan delegation was a Sahrawi, Biyadillah Ould Mohamed Cheikh, who had made allegiance to the Moroccans.¹⁹⁸ When Senoussi received the POLISARIO delegation in Al-Ayoun, he told the representatives in a paternalistic tone: "You are our sons and you are here in your country."¹⁹⁹ He also told them that since the peace plan "is locked up in the Secretary-General's safe in New York, we are not here to discuss it."²⁰⁰

During the fourth meeting of the two delegations, the Moroccans read the King's message which stated that "all Saharans are his sons and that none of them are disobedient as he expresses the hope that anyone who has gone astray will return to the right path."²⁰¹ He repeated his proposal for autonomy within the framework of Morocco's regionalization. He asked the Sahrawis "to contribute any vision, idea, suggestion, or whatever you deem appropriate, to the development of this region within Moroccan sovereignty and territorial integrity."²⁰²

196. *King Hassan, U.N. Envoy Discuss Western Sahara*, REUTER LIBRARY REP., June 7, 1993, available in LEXIS News Library, ARCNEWS file.

197. *Ali Bouzerda, Western Sahara Foes Meet for First Direct Talks*, REUTER LIBRARY REP., July 17, 1993, available in LEXIS, News Library, ARCNEWS file.

198. *Le Malentendu de Laayoun*, JEUNE AFRIQUE, July 29-Aug. 4, 1993, at 11.

199. *Id.*

200. *Id.*

201. *King Hassan Message on Talks with Polisario*, F.B.I.S.-N.E.S., July 21, 1993, at 18.

202. *Id.*

This and other statements are a clear demonstration that the Moroccan side has no intention of negotiating with the Sahrawis. The July meeting was not a case of “getting to the table” to begin negotiation or even prenegotiation, but rather, as bluntly put by the head of the Moroccan delegation:

From the beginning, it was out of the question to discuss the procedures for implementing the referendum on self-determination, which remain under the authority of the U.N. Secretary-General alone.

Therefore anything that comes under the authority of the UN secretary general or of his special representative cannot be discussed in our meetings. Definitely, this was not what our Saharan brothers of the Polisario thought. . . .

... The issue was connected with informing our brothers that the Moroccan character of the Sahara cannot be a subject for compromise. As long as his majesty has announced that the homeland is forgiving and merciful, it remains for them to study the best and most honorable way to return to the homeland, since the Moroccan character of the Sahara has become an irrevocable matter. . . .²⁰³

The meetings ended on July 19. Even if, perhaps, some psychological barriers were broken, overall, the Al Ayoun talks accomplished nothing. There was much bickering over protocol and other trivial issues. The main problems were never addressed. As put by the Sahrawi Ambassador to Algeria, Mohamed Lamine, “The only positive result is that we met, officially. As for exploring the depths of the issue, that did not happen.”²⁰⁴ The two positions were too far apart to be narrowed down in a few meetings. Morocco sought—and still does seek—to absorb the Western Sahara through a confirmatory referendum to be held whenever the Moroccans are sure of the outcome or through POLISARIO’s acceptance of the so-called regionalization plan which amounts, in effect, to Moroccan annexation. For its part, POLISARIO strives for independence and seeks negotiations in order to convince Morocco that it would be granted all sorts of advantageous cooperative agreements with an independent SADR: normal diplomatic relations, security arrangements (non interference), economic cooperation at all levels, and an adequate solution for Moroccan citizens remaining in the SADR.²⁰⁵

Even though the Al Ayoun meetings might have constituted a positive step toward resolution of the conflict, the “tragicomedy” that took place in New York in October 1993 proved how deceptive promises of negotiations can be. Indeed, a high-level Sahrawi delegation went to New York to engage in direct negotiations with a Moroccan negotiating team. Instead, they were

203. *Delegation Head: Sahara Irrevocably Part of Country*, F.B.I.S.-N.E.S., July 21, 1993, at 19.

204. *Ambassador on Results of Talks*, F.B.I.S.-N.E.S., July 20, 1993, at 16.

205. Déclaration du Front POLISARIO à la séance de clôture des pourparlers d’El-Aioun, [POLISARIO Front Declaration at End of Al Ayoun Meeting] (July 19, 1993) (on file with author).

faced with Sahrawi defectors, despite the U.N. demand that the Moroccan delegation be composed of government officials only.²⁰⁶ Although some members of the Security Council found Morocco's maneuver "provocative,"²⁰⁷ little was done to penalize such a violation. In defiance of the world body, the Moroccan foreign minister reiterated the same statements that have followed all such situations, i.e., that the meeting was simply a gathering between Sahrawis which would allow them to envisage the future of the Territory within the framework of Moroccan regionalization.²⁰⁸

In January 1994, Boutros Boutros-Ghali sought to encourage the holding of direct negotiations. Both sides agreed, but the Moroccans chose as their main negotiator General Abdelhak Kadiri, head of the Moroccan secret services. POLISARIO, apparently, expressed some reservations with respect to the choice, suggesting, instead, that the crown prince or the minister of foreign affairs be the chief negotiator. The Sahrawis were also opposed to including Sahrawi defectors as participants in the eventual negotiations. Further, the two sides objected to the proposed sites: the Sahrawis wished, and obtained the agreement of the French, that the negotiations be held in Paris, whereas the Moroccans preferred Lisbon.

As was to be expected, these talks never materialized. In the meantime, the Secretary-General submitted a report on March 10, in which he basically reiterated his three propositions.²⁰⁹ In its resolution,²¹⁰ the Security Council adopted Option (B) of the Secretary-General's report which calls for the continuation of the work of the Identification Commission.²¹¹ Meanwhile, the United Nations would continue its efforts to obtain the cooperation of both parties on the basis of the compromise proposal of the Secretary-General.²¹² Undoubtedly, the Security Council rejected Options (A) and (C) which would have been decidedly in favor of Morocco, for the first would have permitted the U.N. to "proceed to hold the referendum regardless of the cooperation of either party," i.e., without the POLISARIO, which is still opposed to the criteria for eligibility imposed by the Moroccan side.²¹³ In Option (C), the Secretary-General recommends that, should the U.N. fail to obtain the cooperation of both parties in the completion of the registration

206. *Western Sahara: U.N. Talks Break Off Over Representation*, INTER PRESS SERVICE, Oct. 27, 1993, available in LEXIS, News Library, ARCNWS file.

207. Anthony Goodman, *Morocco-Polisario Talks on W. Sahara Collapse*, REUTER LIBRARY Rep., Oct. 27, 1993, available in LEXIS, News Library, ARCNWS file (quoting U.S. Ambassador, Madeleine Albright).

208. *Negotiations over Western Sahara Open in Stalemate*, AGENCE FRANCE PRESSE, Oct. 26, 1993, available in LEXIS, News Library, ARCNWS file.

209. *The Situation Concerning the Western Sahara: Report by the Secretary-General*, U.N. SCOR, 49th Sess., U.N. Doc. S/1994/283 (1994).

210. S.C. Res. 907, U.N. SCOR, 49th Sess., U.N. Doc. S/RES/907 (1994).

211. *Id.* at 2.

212. *Id.*

213. *The Situation Concerning the Western Sahara: Report by the Secretary-General*, U.N. SCOR, 49th Sess., at 7, U.N. Doc. S/1994/283 (1994).

and identification process, the Security Council might “decide either that the whole MINURSO operation should be phased out . . . or that the registration and identification process should be suspended but that a reduced United Nations military presence should be retained to encourage respect for the cease-fire.”²¹⁴

In Fall 1995, the situation concerning Western Sahara continued to be rather bleak. The specter of renewed military hostilities is still hanging over the region. There were no signs that direct talks, let alone negotiations, were about to take place. The United Nations has lost much of its credibility in the eyes of the Sahrawis. The United Nations has failed to hold the referendum for self-determination and to implement the peace plan it has itself elaborated. Such a failure, coupled with the Sahrawi lack of confidence in what is perceived as overt partiality of Boutros-Ghali in favor of Morocco, led POLISARIO to contemplate the resumption of hostilities to break the stalemate.²¹⁵

CONCLUSION

The absence of serious direct negotiations between Morocco and POLISARIO, now at war for more than twenty years, has prevented the resolution of the Western Sahara conflict through peaceful means. The Sahrawis have been more open to the idea of direct talks, but Morocco has always resisted, for various and obvious reasons. Even though the parties did meet face to face, the Moroccan side never considered talks to be a viable option. Morocco’s opposition to genuine negotiations has been motivated by several factors. Many considerations—political, economic, cultural, and geopolitical—have prevented King Hassan, who has made the Western Sahara a question of national resolve, from agreeing to enter into real negotiations. In response to Saunders’ question, “Why don’t people negotiate?”²¹⁶ the answer, as applied to Morocco, is obviously very complex. Yet, a few propositions can be advanced.

The two sides to this conflict have had a different definition of the problem. Morocco has defined the problem as one of “national sovereignty,” which consists of the “recovery of the lost territories,” and a war against “secessionists,” sponsored by outside powers. The objective, from a Moroccan point of view, is to maintain occupation, albeit illegal, of the territory and to obtain recognition of its *fait accompli* by the international community. All means must, therefore, be used to convince the “secessionists” to join the homeland. For POLISARIO, the Sahrawi question is one of decolonization and of self-determination based on international legality.

214. *Id.* at 8.

215. See *Polisario: Referendum in Dec. or ‘Armed Battle,’* F.B.I.S.-N.E.S., Aug. 25, 1995, at 25-27.

216. Saunders, *supra* note 1, at 251.

The ultimate objective is total independence of the disputed Territory. Thus, there is total disagreement on the nature of the problem. The two sides could not enter prenegotiation because they did not address the same issues.

From the inception of the conflict, except on a few occasions when he thought he could negotiate a settlement with the Algerians to the exclusion of the Sahrawis, King Hassan has consistently sought to prolong the status quo, for it serves his interests much better. Regardless of what the outcome of negotiations or a referendum might be, the King would face difficult choices. Negotiating with the Sahrawis on concrete issues would be interpreted as weakness of the monarchy and abandonment of a national cause. Allowing a genuine referendum for self-determination to take place would lead, whatever the results, to major difficulties. If he wins it, the King will no longer be able to justify the domestic policies he has adopted since the beginning of the dispute.²¹⁷ Further, he will no longer be able to keep his untrustworthy military occupied and far from the palace.²¹⁸ Also, a victorious referendum—without prior negotiations with POLISARIO—would confront Moroccan society with rebellious Sahrawis. A defeat in the referendum would have grave consequences for the monarchy because its continued legitimacy might be jeopardized. This partly explains why the King has used the stalemate to his own advantage by establishing an irreversible presence in the “useful” part of the territory occupied by Morocco. The huge investments and the settlement of Moroccan citizens in the area have, from a Moroccan point of view, a permanent character.²¹⁹

The support he obtained from the Western powers also encouraged the King to pursue his tactics. During the Cold War, this support was quite obvious even though it was clear that the Sahrawi issue never took on an East-West dimension and that POLISARIO had no links with the Soviet Union.²²⁰ In the post Cold-War era, the U.S. position has become more neutral; France and Spain have remained ambivalent, despite public statements to the contrary. But, the lack of political will in bilateral relations with Morocco and within the United Nations has done little to persuade King Hassan to seek a negotiated settlement to the Western Sahara conflict. The instability in Algeria has compelled Western powers not to act in a way that may lead to the destabilization of Morocco.

The weakness of the United Nations, combined with a complaisant attitude on the part of the Secretary-General and his Special Representative, has been an additional factor in encouraging the King to cling to his

217. See HODGES, *supra* note 5, at 293-304.

218. See generally Pranay Gupte, *A Friend in Need*, ATLANTIC MONTHLY, Dec. 1982, at 24.

219. Bookmiller, *supra* note 28, at 68; *Conflict Impedes Maghrib Unity*, *supra* note 28, at 28-29. See also Andrew Gowers, *A Boomtown in the Sahara Dunes*, FIN. TIMES (London), July 13, 1987, at viii.

220. Yahia Zoubir, *Moscow, the Maghreb, and Conflict in the Western Sahara*, in INTERNATIONAL DIMENSIONS, *supra* note 5, at 103-25.

determined position not to negotiate with the Sahrawi nationalists.

The relative weakness of the Algerian regime, due to severe socio-economic and political problems, has affected Moroccan (mis)perception of the capacity of its neighbor to continue supporting POLISARIO and the SADR. There is no doubt that Algeria's preoccupation with domestic problems and the signs of divisions within its leadership concerning support for the Sahrawi cause, combined with the factors listed above, have prompted King Hassan to estimate "that the possible outcomes from negotiation are less attractive than the alternatives to negotiation."²²¹ The dissension within POLISARIO, due to the lack of progress toward a solution, has created a new dimension in the King's calculations. Dissension coupled with the defections of a few POLISARIO leaders²²² has convinced the King that the best course of action is to gain time and wait until POLISARIO has disintegrated. Further, having used the cease-fire to strengthen his military position, the King is assured of total military domination in the field should the war resume.

There is another factor in explaining why the King is reluctant to negotiate with POLISARIO leaders. Direct, genuine, negotiations with the Sahrawis would result in the official recognition of the POLISARIO as a legitimate interlocutor and representative of the Sahrawi people—even though one might argue that there was a *de facto* recognition in the talks of January 1989—but it would also open the door to further state recognitions to add to the more than seventy-five already obtained by the SADR.²²³ In addition, direct negotiations with the Sahrawis would encourage opposition parties in Morocco to also seek negotiations with the King in the hope of getting concessions on domestic issues. Clearly, the refusal to negotiate with POLISARIO fulfills a domestic function.

At the moment, it is doubtful whether the successful cases of negotiations between the Israelis and the Palestinians or between the ANC and the white minority in South Africa to achieve a peaceful resolution of protracted conflicts will have any impact on Morocco. The Kingdom of Morocco seems to be firmly clinging to its decision not to negotiate. The main objective at the present time is to have the United Nations and the Western powers agree to hold a referendum under Moroccan terms. In December 1995, this scenario was close to materialization. The only question remains whether the United Nations will allow yet another military confrontation to erupt in an already volatile region.

221. Saunders, *supra* note 1, at 257.

222. See, e.g., *Morocco to Speed up Voter Registration; Polisario Representative Defects*, BBC SUMMARY OF WORLD BROADCASTS, Aug. 7, 1995, available in LEXIS, News Library, CURNWS file.

223. South Africa is the latest country to have extended such a recognition having done so in August 1995. See *South Africa to Establish Diplomatic Ties with Western Sahara*, AGENCE FRANCE PRESSE, Mar. 19, 1996, available in LEXIS, News Library, WIRES file.

