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Middle East Institute, April 2, 2008, by [Stephen Zunes](#)

Western Sahara: Self-Determination and International Law

The failure of the Kingdom of Morocco and the Polisario Front to agree on the modalities of the long-planned United Nations-sponsored referendum on the fate of Western Sahara, combined with a growing nonviolent resistance campaign within the territory against Morocco's 31-year occupation, has led Morocco to propose granting the former Spanish colony special autonomous status within the kingdom.

The plan has received the enthusiastic support of the American and French governments as a reasonable compromise to the abiding conflict, which has caused enormous suffering to the Sahrawi people — over half of whom live in refugee camps in neighboring Algeria — and has seriously crippled efforts to advance badly-needed economic and strategic cooperation between Morocco and Algeria as both face the challenges of struggling economies and rising Islamist militancy.

Morocco has failed to live up to the terms of the 1991 UN-supervised ceasefire agreement with the Polisario, which called for a free and fair referendum on the fate of the territory. A series of resolutions by the UN Security Council and the UN General Assembly, as well as a landmark 1975 advisory ruling by the International Court of Justice, have reaffirmed the right of the people of Western Sahara to self-determination. However, France and the United States have blocked the Security Council from enforcing its resolutions as part of their perceived need to strengthen the Moroccan monarchy, seen as a bulwark against Communism and radical Arab nationalism during the Cold War and, in more recent years, an important ally in the struggle against Islamist extremism.

Unfortunately, the Moroccan plan for autonomy falls well short of what is required in bringing about a peaceful resolution to the conflict. Moreover, it seeks to set a dangerous precedent that threatens the very foundation of the post-World War II international legal system.

To begin with, the proposal is based on the assumption that Western Sahara is part of Morocco, a contention that has long been rejected by the United Nations, the International Court of Justice, the African Union, and a broad consensus of international legal opinion. To accept Morocco's autonomy plan would mean that, for the first time since the founding of the United Nations and the ratification of the UN Charter more than 60 years ago, the international community would be endorsing the expansion of a country's territory by military force, thereby establishing a very dangerous and destabilizing precedent.

If the people of Western Sahara accepted an autonomy agreement over independence as a result of a free and fair referendum, it would constitute a legitimate act of self-determination. However, Morocco has explicitly stated that its autonomy proposal "rules out, by definition, the possibility for the independence option to be submitted" to the people of Western Sahara, the vast majority of whom — according to knowledgeable international observers — favor outright independence.

Even if one takes a dismissive attitude toward international law, there are a number of practical concerns regarding the Moroccan proposal as well.

One is that the history of respect for regional autonomy on the part of centralized authoritarian states is quite poor, and has often led to violent conflict, as witnessed by the tragic results from the Ethiopian decision to revoke Eritrea's autonomy in 1961 and the Serbian decision to revoke Kosovo's autonomy in 1989.

Based upon Morocco's record of breaking its promises to the international community regarding the UN-mandated referendum for Western Sahara and related obligations based on the ceasefire agreement 17 years ago, there is little to inspire confidence that the Kingdom would live up to its promises to provide genuine autonomy for Western Sahara.

Indeed, a close reading of the proposal raises questions as to how much autonomy is even being offered. Important matters such as control of Western Sahara's natural resources and law enforcement (beyond local jurisdictions) remain ambiguous.

In addition, the proposal appears to indicate that all powers not specifically vested in the autonomous region would remain with the Kingdom. Indeed, since the King of Morocco is ultimately invested with absolute authority under Article 19 of the Moroccan Constitution, the autonomy proposal's insistence that the Moroccan state "will keep its powers in the royal domains, especially with respect to defense, external relations and the constitutional and religious prerogatives of His Majesty the King," appears to afford the monarch considerable latitude of interpretation.

There appears to be a growing consensus within the international community that some sort of compromise, or "third way" between independence and integration, is necessary to resolve the conflict and that a "winner take all" approach, such as a referendum on independence, is unworkable.

While encouraging such compromise and trying to find a win/win situation is certainly the preferable way to pursue a lasting peaceful settlement regarding ethnic conflict and many international disputes, Western Sahara is a clear-cut case of self-determination for a people struggling against foreign military occupation. The Polisario Front has already offered guarantees to protect Moroccan strategic and economic interests if allowed full independence. To insist that the people of Western Sahara must give up their moral and legal right to genuine self-determination, then, is not a recipe for conflict resolution, but for far more serious conflict in the future.

As a result of the French and American veto threats, the UN Security Council has failed to place the Western Sahara issue under Chapter VII of the UN Charter, which would provide the international community with the power to impose sanctions or other appropriate leverage to force the Moroccan regime to abide by the UN mandates it has up until now disregarded. The Polisario's unwillingness to compromise the right of the Western Saharan people to self-determination, therefore, should not be seen as the major obstacle impeding the resolution of the conflict.

In the comparable case of East Timor, it was only after human rights organizations, church groups, and other activists in the United States, Great Britain, Australia, and elsewhere successfully pressured their governments to end their support for Indonesia's occupation that the Jakarta regime was finally willing to offer a referendum which gave the East Timorese their right to self-determination. It may take a similar grassroots campaign in Europe and North America to ensure that Western powers live up to their international legal obligations and pressure Morocco to allow the people of Western Sahara to determine their own destiny.

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