

INTERNATIONAL LAW AND LIBERATION MOVEMENT FOR SELF-RULE IN SAHARAWI ARAB DEMOCRATIC REPUBLIC

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Abstract

For over 30 years now, the Polisario Front has led the Saharawi Struggle for independence in Arab Democratic Republic. Following Spanish decolonization of the territory in 1976, Morocco claimed the territory of Arab Democratic Republic leading to a protracted war against the Polisario Front. The 1991 United Nation brokered ceasefire agreement prompted the Polisario to switch from warfare as its main tactic to leveraging international support for Saharawi self-determination and raising awareness of the conflict, consequently the study discussed how the international community helped the Polisario Front gain recognition for its cause, the Polisario Front's tactics for leveraging international support, and the limits of relying on the international community. The study employed the systematic review research design with the entire workforce of selected research institute in Lagos also on secondary data which are entirely literature-based such as relevant academic writings, journalistic articles, newspaper textbooks, reports as well as the internet and travelogues. It is equally indispensable that the negotiations address effectively the full range of interests and principles which have been at stake in the conflict. It is accordingly essential that they not be prejudiced at the outset by the stipulation that their objective is to secure the self-determination of the people of Arab Democratic Republic. Their objective should be to resolve the conflict between the parties through an agreement to which they all genuinely adhere, whatever principles that agreement may be based on.

Introduction

The conflict in the West Sahara territory is a phenomenon that has captured the interest of international organisations, regional actors, international relations Scholars, and the public at large. Although, Saharawi Arab democratic Republic liberated itself from the clutches of Spanish colonialism in 1975, the occupation of the Moroccans afterwards, has become a protracted issue in the Western Sahara region. The United Nations (UN) and African Union (AU) mediated to no avail for a peaceful resolution between Saharawi Arab Democratic Republic and Morocco over its political independence and Moroccans' dominance since 1976 (International Crisis Group, 2007). This occupation of the Moroccans has been perceived as a violation of Article 1 of the UN Charter, which states that all people have the right to freely determine their political status (Human Rights Watch, 2008). Based on Morocco's relegation of this fundamental pillar of international law, the Africa Union (AU) decided to recognize Western Sahara as Africa's last colony that extricated itself from the suzerainty of Spain (United Nations Security Council Resolution, 2019). Regardless of the effort of AU, the conflict has progressed unabated to the point that some international lawyers beautifully described situation when they argued that the "issue is not a problem of law, but politics" (Hans

Kelsen, 1966 and Hans Morgenthau, 1978). Presently, the International Court of Justice (ICJ) has rejected Moroccan's claim to Saharawi Arab Democratic Republic, based on the recent historical findings that have clearly justified the action of the Saharawi's citizens for independence (www.hartford-hwp.com/archives/32/017.html).

However, despite the varied interventions of UN, AU and other organisations concerning this conflict, the fundamental right to self-determination of the citizen of the Saharawi Arab Democratic Republic has not been upheld. This has prolonged the conflict between the Saharawi people who are struggling for independence and the Moroccans who have continued in their claim and dominant occupation over Saharawi's territory. Consequently, the protracted besiegement of Saharawi's borders with heavy military and landmines has not only threatened the safety of the citizens of Saharawi Arab Democratic Republic, but has also hindered their social, political and economic development (Wahlisch, 2019). In addition, it has been observed that the Saharawi refugee camps are the second-oldest political refugee camps in the world (after the Palestinian refugee camps in the West Bank), with over 165,000 people living there for nearly 40 years due to the fall out of the conflict. Daniel (2019) has opined that if Western Sahara's status remains unresolved, it will continue to destabilize regional security and undermine bilateral relations between African states, regional cooperation blocs and the legitimacy of the African Union. Although, an attempt has been made by some scholars who explored the role of neighboring countries in the enthronement of peace and stability in Western Sahara, the efficacy of international law in the liberation struggle has not been examined. Hence, the study investigated the role of international law in promoting liberation movement activities for self rule in Saharawi Arab Democratic Republic. The specific objectives are to:

1. Examine the nature and root cause of the conflict between Saharawi Arab Democratic Republic and Morocco.
2. Determine the role of international law in enhancing liberation process in Saharawi Arab Democratic Republic.
3. Analyze the limitation of international law in the promotion of peace in Saharawi Arab Democratic Republic.

Methodology

The data for this paper were completely derived from secondary sources. This was carried out by carefully identifying related materials like books, articles, conference papers, and internet materials which were read, summarized and analyzed copiously in line with the topic under consideration. The data from the secondary source are not only cheap to acquire, they are also available for easy access when compared to the struggle of obtaining primary data. This makes the secondary source to be more advantageous. More so, relevant theory was used to explain the relationship of the variables of the study.

Literature Review

In this review, works that addresses issues such as the changing climates of the region, however a return to violence cannot be rule out indefinitely and peaceful co-existence will be maintained.

It will also explore the works of authors who emphasized that peace keeping efforts should be directed towards tackling the root causes of the souring conflict rather than re-escalation. Finally, appropriate theories for the study will be explained in this chapter as well the gap in the literature stated.

Liberation Movement

In 1996, the General Assembly adopted the international covenants on Human Rights. Both these covenants have an identical first article, declaration that all peoples have the right to self-determination and by virtue of that right they freely determine their political status. While state parties to the instrument "shall promote the realization of the rights of self-determination and shall respect the conformity with the provisions of the charter of the United Nations. The Judicial discussion of the principle of self-determination has been relatively rare and centers on the Namibian and Arab Democratic Republic advisory opinions by the international court (Franck, 2019).

The court was asked for an opinion with regard to the legal ties between the territories at that time with Morocco and Mauritanian entity, they also stressed that the request for an opinion arose out of the consideration by the General Assembly of the decolonization of Arab Democratic Republic and that the right of the people of the territory of self-determination constituted a basic assumption of the questions put to the court. After the critical analysis of the charter provisions and assembly resolutions noted above the court concluded that the ties which had existed between the claimants and the territory during the relevant period of the 1880's were not such as to affect the application of resolution 1514(XV), the colonial declaration in the decolonization of the territory and in particular the rights to self-determination. In other words, it is clear that the court regarded the principles of self-determination as a legal one in the context of such territories. This brings this study to carefully examining the nature of Arab Democratic Republic agitation to limelight in order to understand their hostility in the areas of achieving a sovereign state (Human Rights Watch, 2012, 2020).

The phenomenon of resistance and liberation movements has occurred throughout history and remains current. Wars of independence and attempts of those range back centuries, including prominent examples such as the American Revolutionary War (1775–1783), the Irish War of Independence (1919–1921), the Kosovo War (1996–1999), the Second Sudanese Civil War (1983–2005), and many others. The struggle of the African National Congress (ANC) against the apartheid regime, the efforts of the Palestine Liberation Organization (PLO) to “liberate Palestine,” the demand of the Kurdistan Workers’ Party (PKK) for Kurdish autonomy, and the actions of the armed guerrillas of the Revolutionary Armed Forces of Colombia (FARC) are just some of the widely known cases of resistance and liberation movements. The Arab uprisings in late 2010 and 2011 that spread from Tunisia to Egypt, Yemen, Syria, and other countries in the region are recent examples of civil resistance (Wahlisch, 2019).

International Law

International Human Rights Law (IHRL) governs the obligations of States towards citizens and other individuals within their jurisdiction. Human rights law enshrines the highest of human ideals, that every human being has a set of rights and freedoms. Human rights thus cannot be taken away by States and apply at all times (although specific derogations and limitations are permitted to certain rights and freedoms). Set forth in the Universal Declaration of Human

Rights and a host of core treaties, IHRL plays a crucial role in the protection of all people.

Human rights law also defines the rights of specific vulnerable groups like IDPs or children (International human rights law (IHRL, 2019). Public international law (commonly referred to as ‘international law’) governs relationships between and among entities with international legal personality: sovereign states and other international actors, such as inter-governmental organisations and individual natural persons. The legal personality attributed to these entities means that they have rights, protections, responsibilities and liabilities under international law (Alvarez-Jiménez, 2011). There are four significant sources of international law, identified in Article 38 of the Statute of the International Court of Justice (ICJ):

- i. **International conventions** (treaties) establish written rules that are binding on states that have signed and ratified the conventions. Treaties are contractual in nature, between and among states, and governed by international law (Alvarez- Jimenez, 2011).
- ii. **International custom** establishes unwritten rules that are binding on all states, based on general practice. Their binding power is based on implied consent, evidenced by (a.) virtually uniform state practice over time and (b.) a belief that such practice is a legal obligation (*opinion juris*). Thus, for rules to become part of international customary law, states must follow them, not out of convenience or habit, but because they believe they are legally obligated to do so Alvarez Jimenez (2011).
- iii. **General principles of law recognized by civilized nations** include peremptory norms (*jus cogens*), from which no derogation is allowed – for example, the principles contained in the United Nations Charter that prohibit the use of force except in self-defense. There is ongoing debate, however, about which particular rules have achieved *jus cogens* status Alvarez Jimenez (2011)

- iv. **Judicial decisions and the teachings of the most highly qualified publicists** of the various nations are subsidiary means for the determinations of rules of law. While court decisions and scholarly legal work are not sources of international law, they are considered important in recognizing the law and interpreting and developing the rules sourced in treaties, custom and the general principles of law Alvarez Jimenez (2011).

The first three of the above are recognized as the most important and well-established sources of international law. However, some states, academics and jurists highlight that court judgments, the ICJ's advisory opinions and UN General Assembly Resolutions (often classified as 'soft law') are becoming increasingly influential in the development of the law. In particular, it is argued that they play a role in the establishment of customary international law. For example, the ICJ's decisions that certain treaty provisions in international humanitarian law have the status of customary international law have sometimes led states not party to the treaty to view themselves as bound to comply with its obligations (Alvarez-Jiménez, 2011).

International Law and Liberation Movement Activities for Self-Rule

Wars of national liberation are armed struggles waged by a people through its liberation movement against the established government to achieve self-determination. While wars of this type have been fought since the foundation of the sovereign state system, the main spate of such conflicts occurred in Africa in the postcolonial era of the mid- to late 20th century Higgins (2014). A number of post colonial self-determination conflicts continue today. National liberation movements and governments have opposing views of wars of national liberation. National liberation movements view their armed challenge to the established government as a "just war"; indeed, they view it as a legitimate exercise of a right to revolution, waged to achieve the right of the people they represent to self-determination (Frank, 2006).

Conversely, governments view challenges to their authority as the acts of terrorists and criminals, seeking to destroy public order and, ultimately, territorial integrity, and, in general, they attempt to deal with such violence under domestic criminal or martial law. While a number of states have accepted that national liberation movements have the proper authority to resort to the use of force to achieve self-determination and that their conflicts are lawful, this view is not universally accepted. These conflicts involve the use of force by non-state actors and so they challenge the state centric international law paradigm. However, wars of national liberation have been explicitly accommodated by international humanitarian law since 1977 through the adoption of Additional Protocol I to the Geneva Conventions of 1949 (Frank, 2006).

Article 1(4) of Additional Protocol I provide that international armed conflict situations include armed conflicts in which peoples are fighting against colonial domination, alien occupation, and against racist regimes in the exercise of their right of self-determination. Article 96(3) of Additional Protocol I also provide a mechanism whereby national liberation movements can agree to apply, and be bound by, Additional Protocol I. This amendment to the legal framework, driven by pressure from developing countries and national liberation movements, has been viewed as an important political victory for peoples seeking self-determination. However, despite these amendments, the legal framework has shown itself to be weak and limited in scope Olalia (2002).

States have also proven themselves to be unwilling to apply the current legal regime except in an ad hoc and unpredictable manner. Wars of national liberation have achieved somewhat limited attention in academic commentary to date, with few works dedicated in full to their analysis. A handful of books and a number of articles are specifically dedicated to the topic, although the subject is given some consideration as part of broader discussions on a number of issues, including the use of force, self-determination, and international humanitarian law, among others. Academic attention began to become focused on these conflicts in the 1960s; however, few works have been published on such conflicts in more recent times. Some works on this topic take a theoretical approach and analyze the legal framework concerning wars of national liberation, particularly the *jus in bello* aspect. Other works seek to appreciate how the legal framework has been applied in reality and use case studies to illustrate this (Frank, 2006)

Theoretical Framework

Theories are important instrument in every investigation, as they serve as lenses which give insight and clarity to the researcher. For the purpose of this study, Fredrick Winslow Taylor's Recognition theory and legal Recognition which constitutes a vital human need will serve as theoretical underpinning.

This doctrine was propounded by Fredrick Winslow Taylor in (1994) and the doctrine states that "the legal and political action whereby the recognizing state acknowledges the existence of certain facts and accepts the consequences therefore". The recognition of a state or a government implies readiness to treat the entity as a state and the government as government for all purposes (Taylor, 2011).

Causes of the conflict in the region of Saharawi Republic

The cause for the agitation is driving towards human rights, self-determination and the cause of dispute which is economy exploitation of natural resources. Many scholars trace the norm of self-determination to the American Declaration of Independent of 1776 and echoed in the French Revolution a few years later in the preamble to the 1791 constitution and the Declaration of the Right of man and citizen, which asserted among other things; That the purpose of political association was the preservation of the natural rights of liberty, property, security and resistance to oppression (Hayward, 1991). Therefore, the basis of these two revolutions is the consent of the governed, which makes a government legitimate.

In addition to this liberal concept, the American Declaration of Independence, for instance emphasized the inalienable rights of their citizens and the decision to make the government answerable to the people. The newly defined entity of the state earns 'separable and equal station in the comment of States by demonstrating a decent respect to the opinion of Mankind (Frank, 2006).

Instrumentality in Arab Democratic Republic

Before the UN, the Organization of African Unity (OAU) had tried to resolve the Saharawi Arab Democratic Republic dispute. The UN settlement proposals of 1988 were almost identical to those originally made by the OAU, laying down the broad guidelines for an internationally supervised cease-fire and a referendum offering the choice of independence or integration with Morocco. King Hassan's response to the OAU resolution was a rather ambiguous acceptance, promising to accept a controlled referendum whose modalities should do justice simultaneously to the objectives of the AU and to Morocco's conviction regarding the legitimacy of its rights.

Although the king's statement was viewed by some as a breakthrough in that he accepted the idea of a referendum, statements before and after the speech should have left no doubt that he had a restrictive interpretation of the referendum plan as a "confirmative" one for Morocco. Such statement by the Moroccan authorities regarding the "Moroccanity" of Saharawi Arab Democratic Republic has continued over the years (Wahlisch, 2020).

At the urging of Secretary – General Perez de Cuellar, on July 20, 1985, King Hassan accepted a referendum for self-determination of inhabitants of Saharawi Arab Democratic Republic under UN auspices. In August 1988, the UN delivered to the parties the settlement proposals. The proposals were accepted "in principle," along with comments and observations by both Morocco and the Frente Popular para la Liberacion de Saguia el-Hamra y del Rio de Oro (Polisario), representing the people of Arab Democratic Republic. As Perez de Cuellar admitted in his memoirs, the two parties' comments were diametrically opposed to each other (Perez de Cuellar, 1985).

According to Baker, the Secretary General's June 2009 report on the Saharawi Arab Democratic Republic proposed frame work agreement to confer on the population of the Saharawi the right to elect executive and legislative bodies and also to control a local government and many functional areas (Human Rights Watch 2020).

While these parties regularly call upon the United Nations and relevant states to implement a political solution to resolve this conflict, negotiations have thus far failed to result in an agreement. Given the determined resistance and political challenges to the implementation of any of the three traditional durable solutions (local integration, resettlement to a third country and voluntary repatriation), international agencies

assert that ongoing encampment appears to remain the only viable scenario for Sahrawi refugees (Crivello and Fiddian Qasmiyeh 2010).

Such depictions also appear to accept the political status quo which underpins this context of protracted displacement, implying the relative normality of continued encampment, rather than laying the foundations for a political solution to be found for this refugee situation, Human Rights watch (2008), Rabat (2008). In contrast, this Policy Briefing analyses the challenges and opportunities faced by Saharawi refugees, their political representatives, and international actors, arguing, firstly, that these mainstream assumptions regarding 'ideal' conditions and dynamics in the camps must be challenged, and, secondly, that a careful analysis must be undertaken of the diverse alternative solutions which have been adopted or proposed by Sahrawi refugee families on the one hand and their political representatives and camp managers (the Polisario Front) on the other, Carne & Bernard (2018). While the international community has thus far failed to secure a political solution to this conflict, and the political will to do so appears to be weak, the alternative solutions proposed by Sahrawi individuals and the Polisario challenge the status quo and have far-reaching socio-political, legal and humanitarian implications (Crivello and Fiddian Qasmiyeh 2010).

Conclusion

Wars of national liberation have achieved somewhat limited attention in academic commentary to date, with few works dedicated in full to their analysis. A handful of books and a number of articles are specifically dedicated to the topic, although the subject is given some consideration as part of broader discussions on a number of issues, including the use of force, self-determination, and international humanitarian law, among others. Academic attention began to become focused on these conflicts in the 1960s; however, few works have been published on such conflicts in more recent times. Some works on this topic take a theoretical approach and analyze the legal framework concerning wars of national liberation, particularly the *jus in bello* aspect.

In order for it to be resolved on the basis of self-determination, it is indispensable that the option of independence be available to the voters in an eventual referendum. The Security Council would need to override or neutralize Morocco's objections in some way, either by putting pressure on Rabat to withdraw them or by offering it satisfactory guarantees of aid and assistance to offset the domestic political cost of the concession. If the Security Council cannot agree to do this because of the vested interest that some or all its members may have in their relationship with Rabat, it follows that international law has been rendered inoperative in this affair. In that case, unless the Algerian government and the Polisario Front can find some way to induce the members of the Security Council to revise their calculations of their own interests in the matter, it should be recognized that there is no prospect of a resolution on the basis of the exercise of the right of self-determination and that the impasse will continually indefinitely unless a way forward via direct negotiations can be found.

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