

While it has been complicated by international actors and a number of additional issues, the Western Saharan conflict is relatively clear-cut in terms of international norms and laws. In 1960, the UN General Assembly [GA] passed Resolution 1514 (XV), the Declaration on the Granting of Independence to Colonial Countries and Peoples. According to Res. 1514, “Immediate steps shall be taken, in trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire...in order to enable them to enjoy complete independence and freedom.”

According to UN GA Resolution 1541 (XV) – also passed in 1960 – colonizing powers were instructed to allow for self-government in their colonies either through the creation of an independent state, autonomy under an existing independent state, or full integration with another state, according to the will of the colonized population. In 1963, the UN Special Committee on Decolonization declared the Western Sahara to be a non-self-governing territory, thus making the provisions of Resolutions 1514 (XV) and 1541 (XV) applicable to the decolonization of Spain’s African protectorate.

*“...to transfer all powers to the people of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed, or color, in order to enable them to enjoy complete independence and freedom.”*

### **- UN General Assembly Res. 1514 (XV) 1960**

In 1966, the General Assembly asked Spain to organize a referendum for the Saharawi people that would include the three options for self-government included under Resolution 1541 (XV): autonomy, integration, or independence. With no concrete action on the part of the Spanish, the UN made the same request every year until 1973.

In October 1975, the case of the Western Sahara was submitted to the International Court of Justice [ICJ] for an advisory opinion on its status and Moroccan claims of sovereignty over the territory. The Court determined 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 a nature as might affect the application of General Assembly 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.” Despite this clear conclusion, the Moroccans and Mauritians continued to claim sovereignty over the Western Sahara.

The following month, Spain engaged in negotiations with Mauritania and Morocco, the latter of which had already sent hundreds of thousands of Moroccans into the Western Sahara during

the Green March. The three countries signed the Madrid Accords, which created an interim Western Saharan government led by Morocco, Mauritania, and the Saharawi Yema'a, which had been created by Spain a decade before to legitimize its colonial control. Despite the agreement for shared government with the Saharawis, ultimately Morocco and Mauritania sent troops into the territory and divided it into two regions under their direct control, effectively marginalizing the Saharawis within their own land.

Spain, enmeshed in political turmoil resulting from the death of long-time ruler Gen. Francisco Franco in November 1975, pulled out of the Western Sahara and abandoned all of its legal obligations in its former colonial possession. According to Article 73 of the UN Charter, "Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories." As the UN General Assembly has never given Spain authorization to relinquish its duties related to the Saharawis – and did recognize the Madrid Accords as a legitimate treaty – Spain is technically still the administering power over the Western Sahara. While Morocco exercises de facto control over much of the territory and while MINURSO took on the responsibility of organizing the referendum – albeit without success – it is the Spanish who are ultimately responsible for the self-determination of the Western Sahara, according to UN principles. Thus, under international law, the Saharawis of the Western Sahara should be allowed to exercise their right to self-determination through a democratic referendum, which should technically be arranged by Spain. Unfortunately, as is often the case, geopolitics and territorial ambitions have overshadowed international norms on human rights, political rights, and self-determination.

### **Regional Law and Norms**

Regional norms are also applicable in the case of the Western Sahara, most notably through the African Union [AU], of which the SADR is a founding member. Through the AU and its predecessor organization, the African community agreed that to avoid future conflicts, the borders drawn arbitrarily by European colonizers in the 19th and 20th centuries should be respected as the borders of modern-day states. According to Resolution AHG/Res.16 [1964] passed by the Organization of African Unity (OAU), "[T]he Assembly...solemnly declared that all member States pledge themselves to respect the borders existing on their achievement of national independence." Morocco was a founding member of the OAU and remained active in the organization until 1982, when the OAU recognized the SADR as a sovereign government. Two years later, Morocco formally withdrew.

Later, the African Union (AU) included the same concept in its Constitutive Act, Article 4(b) which states that the AU shall ensure the "respect of borders existing on achievement of independence." Upon its independence in 1956, Morocco's borders did not include the Western Sahara, which remained under Spanish rule for another two decades. Today, Morocco is the only African country that voluntarily refuses membership in the AU. While AU provisions thus do not technically apply to Morocco, respect for colonial boundaries is a continent-wide principle

that is intended to reduce the amount of intra and interstate war in Africa. As founding members of the African Union, the Saharawis argue that respect for colonial borders is yet more proof of their right to statehood and freedom.