Like two drops of water: the cases of Western Sahara and East Timor
1999

20 May 2002
Le droit international et la question du Sahara occidental
Two neighbouring countries...
... for many years ruled by dictators,

Salazar...

... and Franco.
One day the two dictatorships collapsed...
... and the two colonies hoped for their liberation.
But two countries neighbouring those colonies...

... Indonesia

and Morocco...
... which were also ruled for a long time by dictators,

Suharto... ... and Hassan II,
... invaded them almost simultaneously.

(7 December 1975)

(6 November 1975)
For the invasions they got weapons and diplomatic support from the same source:
The UN Security Council condemned both occupations...

<table>
<thead>
<tr>
<th>Resolution</th>
<th>Date</th>
<th>Details</th>
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<tbody>
<tr>
<td>S/RES/384</td>
<td>22 December 1975</td>
<td>The Security Council, (...) 2. Calls upon the Government of Indonesia to withdraw without delay all its forces from the Territory;(...)</td>
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<td>S/RES/380</td>
<td>6 November 1975</td>
<td>The Security Council, (...) 2. Calls upon Morocco immediately to withdraw from the Territory of Western Sahara (...)</td>
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... and the International Court of Justice reaffirmed the right to self-determination of both colonized peoples...
“For the two Parties, the Territory of East Timor remains a non-self-governing territory and its people has the right to self-determination. Moreover, the General Assembly (...) has treated East Timor as such a territory. The competent subsidiary organs of the General Assembly have continued to treat East Timor as such to this day. Furthermore, the Security Council, in its resolutions 384 (1975) and 389 (1976) has expressly called for respect for "the territorial integrity of East Timor as well as the inalienable right of its people to self-determination in accordance with General Assembly resolution 1514 (XV)".”

International Court of Justice, Case concerning East Timor (Portugal v. Australia), ICJ Reports, 1995, p.103, para. 31.
“(…) 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 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”

(International Court of Justice, *Western Sahara Advisory Opinion*, ICJ Reports, 1975, p.68, para. 162)
Invasion, occupation and annexation of Western Sahara and East Timor:

• violation of the UN Charter
• international crime against peace
• violation of the right to self-determination

By maintaining the occupation:

• act of disobedience against the United Nations
Portugal  East Timor

* lobbying at the UN
* lobbying at the EU (member since 1986)
* proceedings against Australia before the ICJ concerning the Timor Gap Treaty

Algeria  Western Sahara

* humanitarian support (Tindouf)
* weapons and training
* diplomatic support
The alleged economic non-viability of Western Sahara and East Timor
UNGA Res. 1514 (XV), paragraph 3:

“Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.”
The Saharawi Arab Democratic Republic
Montevideo Convention on the Rights and Duties of States (1933), article 1:

“The state as a person of international law should possess the following qualifications:
(a) a permanent population;
(b) a defined territory;
(c) government; and
(d) capacity to enter into relations with the other states.”

(Criteria for statehood, recognized as a statement of customary international law)
A referendum in East Timor, but not in Western Sahara
• Hassan II – autonomy proposal in the 80’s
• UN-OUA Peace Plan for Western Sahara of June 1990
• Establishment of MINURSO
• Date fixed for the referendum, but postponed

• Habibie – autonomy proposal in 1998
• New York tripartite agreement on 5 May 1999
• Establishment of UNAMET
• Date fixed for the referendum, but postponed
Do you ACCEPT the proposed special autonomy for East Timor within the Unitary State of the Republic of Indonesia?

Apakah anda MENERIMA usul otonomi khusus untuk Timor Timur di dalam Negara Kesatuan Republik Indonesia?

Ita Boot SIMU proposta autonomia espesial ba Timor Lorosae iha Estadu Unitariu Republika Indonezia nia laran?

Aceita a autonómia especial proposta para Timor Leste integrada no Estado Unitário da Republica da Indonésia?

OR ATAU KA OU

Do you REJECT the proposed special autonomy for East Timor, leading to East Timor’s separation from Indonesia?

Apakah anda MENOLAK usul otonomi khusus Timor Timur, yang akan mengakibatkan berpisahnya Timor Timur dari Indonesia?

Ita Boot LA SIMU proposta autonomia espesial ba Timor Lorosae nebê sei lori Timor Lorosae atu haketak an hosi Indonezia?

Rejeita a autonomia especial proposta para Timor Leste, levando à separação de Timor Leste da Indonésia?
Principle IX of Resolution 1541 (XV):

“The integration should be the result of the freely expressed wishes of the Territory’s peoples acting with full knowledge of the change in their status, their wishes having been expressed through informed and democratic processes impartially conducted and based on universal adult suffrage”.

2003- “Peace Plan for self-determination for the people of Western Sahara” (Baker Plan II):

• four to five-year period in which the Saharawis would be reunited in the territory
• provisional administration elected by the 86,381 voters, Western Sahara granted autonomy
• a referendum would allow to an extended electorate, including all the residents in the territory since 1999, to chose among independence, integration or autonomy within Morocco
• Polisario Front accepted to cooperate with the UN on the plan
• Morocco rejected it
• James Baker: “the Moroccans concluded that they weren't even willing to risk a vote (...) I would assume it was because they were worried that they wouldn't win the vote”.
• 2005: Peter van Walsum appointed as UN Secretary General’s Personal Envoy for Western Sahara.
• Since 2002 Mohamed VI dismisses the idea of a referendum, rejecting thus the 1990 Settlement Plan and the Houston Agreement of 1997 that his father’s government had subscribed to.

• … considers as irrevocable Morocco’s “sovereignty” over “the Southern Provinces”

March 2006:
“Morocco will not cede a single inch, nor a grain of sand of its dear Sahara”
- April 2007: “Moroccan initiative for negotiating an autonomy statute for the Sahara region”
- Ambassador Frank Ruddy: “the latest in a long line of illusions that Morocco has created over the years to distract world attention from the real issue (...) (It) might sound like a step forward, at least until one reads the not-so-fine print. Article 6 of the plan provides that Morocco will keep its powers in the royal domain, especially with regard to defense, external relations and the constitutional and religious prerogatives of his majesty the king. In other words, the Moroccans are offering autonomy, except in everything that counts”.

April 2008: Peter van Walsum told Security Council that independence for Western Sahara was unrealistic

Christopher Ross (Feb. 2009): "a solution that includes the right of the Saharawi people to self-determination"
Human rights abuses
• East Timor: more than 200,000 deaths, a third of the original size of the population
• Massacres on Uadaboro Mountain and in Taipo (November 1978, ca. 800 killed),
• in Lacluta (September 1981, ca. 500 killed),
• in Kuaras (August 1983, ca. 700 killed)
• at the cemetery of Santa Cruz in Dili (12 November 1991, ca 300 killed)
Amnesty International report (April 1996): “The pattern of "disappearance" of (...) political opponents by the Moroccan authorities dates back to the 1960s (...) "disappearances" of Sahrawis began to occur at the end of 1975 and continued until the late 1980s. (...) Detainees were taken to secret detention centres (...) where torture and ill-treatment was routine, especially during interrogation. With few exceptions, those detained were never charged with any offence, brought to trial, or put through any legal process. Some were released after weeks and months in secret detention, and hundreds of others simply ‘disappeared’.”
The Saharawi intifada

The Black Prison in El Ayun
Amnesty International Report (May 2007):

- hundreds of arrests,
- allegations of torture,
- of unfair trials
- and continued intimidation of human rights activists
As has been stated in various UN fora, the right to self-determination for the people of Western Sahara must be ensured and implemented without any further delay. As underlined above, the delegation concludes that almost all human rights violations and concerns with regard to the people of Western Sahara, whether under the de facto authority of the Government of Morocco or of the Frente Polisario, stem from the non-implementation of this fundamental human right.
For **Western Sahara** the focus of Human Rights Watch's investigation is the right of persons to speak, assemble, and associate on behalf of self-determination for the Sahrawi people and on behalf of their human rights. We found that Moroccan authorities repress this right through laws penalizing affronts to Morocco's "territorial integrity," through arbitrary arrests, unfair trials, restrictions on associations and assemblies, and through police violence and harassment that goes unpunished. (…)

For the **refugee camps in Tindouf** (…) we found that at the present time, the Polisario effectively marginalizes those who directly challenge its leadership or general political orientation, but it does not imprison them. It allows residents to criticize its day-to-day administration of camp affairs. In practice, camp residents are able to leave the camps, via Mauritania, if they wish to do so. (…)

From the Summary of the Human Rights Watch’s report ‘Human Rights in Western Sahara and in the Tindouf Refugee Camps’ (December 19, 2008):
March 2009 - Report of the European Parliament ad hoc delegation for Sahara:

- recognized the reality of systematic violations of human rights by Morocco in the occupied territory of Western Sahara

- considered the violation of the right to self-determination as the root of all those violations

- proposed that MINURSO’s mandate include monitoring the situation of human rights in the region

- regretted silence of report on the pillage of natural resources

- demanded EU to freeze the granting of an ‘advanced status’ to Morocco
Due to the French threat of veto in the Security Council (April 2009), MINURSO continues to be the ONLY UN mission which does not monitor the situation of human rights in its region.

The EU, under French pressure, continues to implement the decision of granting an ‘advanced status’ to Morocco.
Sidi Mohammed Daddach
Winner of the 2002 Rafto Memorial Prize

Aminatou Haidar
Winner of the 2008 Robert F. Kennedy Human Rights Award

Rabab Amidane
Winner of the 2009 Norwegian Student Peace Prize
The pillage of the natural resources
Prof Roger Clark: “Australia, a receptor of stolen goods”
Would you buy a television set if you knew it had been stolen, no matter how cheap the thief might sell it? Besides knowing that the television set belongs to a neighbour of yours? Knowing also that the thief illegally occupies the house of your neighbour and keeps him as a hostage? Of course not. Nevertheless, once the EU Commission, headed by Durão Barroso, managed to get a certain proposal approved by the European Parliament and Council, you will do something quite similar every time you buy fish in the nearby supermarket or fish market. Why? Because the Council, with the assent of the Parliament, ratified a fisheries agreement that the Commission had negotiated with Morocco, under which Spanish, Portuguese and other EU member states’ vessels will be licensed to fish in the waters of Western Sahara, a territory illegally occupied by Morocco.
Conclusion
Whatever the political maneuvers of Morocco and some states may be, one thing they have to recognize: there is no alternative to self-determination. The Saharawis must decide freely on their future status, as the East Timorese did already.
Respect for international law is a precondition for world peace. The international community ought to strengthen, not to undermine it. The UN should not measure with two different yardsticks, as that is contrary to the most elementary notions of justice and would thus weaken the basic fundamentals of modern international law. In other words, the UN has to ensure that also in the case of Western Sahara realpolitik does not prevail.