



Western Sahara: the United Nations will determine for you

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Introduction

Western Sahara is a territory wedged between Morocco and Mauritania along the North African Atlantic Coast, bordering the above-mentioned countries, North and South respectively, as well as Algeria on its Eastern border. Its size is 266,000 square kilometers (half of Spain or about the same as Colorado). Its population is somewhat uncertain, as part of the population live in exile in the barren lands of Western Algeria, some of it inside Moroccan-dominated Western Sahara itself and still some in Northern Mauritania, the very determination of Western Saharan identity the subject of much contention and, indeed, of this very article. It could, however, be numbered at around a quarter million people, if one is to make a projection on the basis of the pre-Moroccan occupation 1974 Census. That population is of Arab ancestry and speaks an Arabic dialect, Hassaniya.

Sovereignty over the former Spanish colony is yet to be determined under international law. The United Nations has been seized of the matter for more than thirty years, first through its General Assembly and, since the late 80s, through the Security Council. It still remains unresolved, even as the twin dispute over East Timor has ended with the birth of a new nation.¹

This article sets out to discuss the so called United Nations Identification Process, a central component of the United Nations & African Unity² - brokered Settlement Plan for the Self-determination of the People of Western Sahara, made between Saharaoui³ representatives and the Kingdom of Morocco. The Plan, endorsed by the United Nations Security Council in 1991, provided for a referendum in which Western Saharans would decide between independence and annexation to Mo-

rocco. United Nations officials, through the Identification Process, would ascertain the claims by potential voters as to their identity and their eligibility to vote in such a referendum.

The following pages account for developments through 1996⁴, up to the appointment of former Secretary of State James Baker as UN mediator in the process. Even as the dossier continued its protracted course at the United Nations, the key issues surrounding the topic are described in detail, along with legal and historical background of the process.

I. Western Sahara: a brief history

Western Sahara became a Spanish colony in 1884, once Spain was able to conclude an assortment of agreements with leaders and principals of the local tribes that allowed her to occupy various outposts along the coast. The Spanish Government, however, did not establish a functioning administration of the province up until 1947. Drills that year turned up a soil rich in phosphates. During the 50s and 60s, the Spanish Administration developed significantly to reflect the ensuing commercial interests.

In the meantime, several fledgling national liberation groups sprang into existence. In 1973, they eventually coalesced into the Front for the Liberation of Shakia al Hamra and Rio de Oro (Frente Polisario, as it is known in its Spanish acronym). Shakia al Hamra and Rio de Oro are the two main geographical areas of the territory. In the United Nations, throughout the 60s, Morocco and Mauritania petitioned for the de-colonization of the province. The United Nations General Assembly, as provided for by Resolution 2229, urged Spain to call a referendum to effect that provision. The practicalities of the referendum would be for Spain to deter-

mine, in consultation with Morocco and Mauritania.

The United Nations reiterated that demand in a number of resolutions adopted through 1973. For their part, Morocco and Mauritania claimed that Western Sahara, of right, should be a part of their respective territories. In practice, that claim was at cross-purposes with any self-determination referendum. In 1974, both countries got enough support within the General Assembly to stall the staging of one such referendum. That year the General Assembly referred the matter to the International Court of Justice (ICJ). The Court had to pronounce itself on the question of the sovereignty over the territory before any referendum could take place (the opinion of the Court is described in Chapter II).

In the wake of the rendering of the Opinion by the Court, Spain, Morocco and Mauritania concluded an Agreement that provided for a tripartite transitional administration to be concluded by 28 February 1976. At that point, Morocco and Mauritania would partition the province between them an annex the ensuing halves. That the interpretation of the three Governments was not consistent with that of the United Nations there is but scant doubt. On 10 December 1975 the General Assembly adopted two resolutions urging a referendum for the self-determination of the Saharaoui. On 11 December, Moroccan and Mauritanian troops invaded Western Sahara from North and South sending waves of refugees eastward and into Algeria, where most of the Saharaoui have been in camps ever since.

On 26 February 1976 the Yemaa met. The Yemaa had been a traditional institution of the territory, a gathering of tribal leaders co-opted by the colonial administration into acting as a rubber stamp body under the guise of a repre-

sentative local assembly. On that day, the Yemaa, invoking its “representative” nature, endorsed the halving of the province and the integration of the resulting sections in Morocco and Mauritania. The next day, the Frente Polisario declared war between the Movement and both countries. It farther proclaimed the establishment of the Saharaoui Arab Democratic Republic (SADR).

Hostilities during the late 70s saw a triumphant Frente Polisario overwhelming the weak Mauritanian army. Mauritania ultimately relinquished any claim over Western Sahara in August 1979. War on the Northern Front against Morocco was also successful for the Saharaoui up until 1982. It was then that the Commander of the Moroccan Royal Armed Forces, Dlimi, came up with the idea of erecting a wall of sand, effectively insulating the Moroccan occupied swath, that encompassed most of Western Sahara, from the Southeastern portion, adjoining Algeria and Northern Mauritania. The Berm, as it is known, and its successive expansions over the years, separated the now Moroccan re-populated, economically viable areas, from the Saharan desert straddling Western Algeria and the Eastern fringe of the territory. It still does.

The Frente Polisario had thus been thwarted militarily, its freedom of movement confined, but Morocco was, for its part, exhausted by a war that immobilized hundreds of thousands of troops and consumed 60% of its GDP. The military impasse led both parties to accept the Joint OAU - UN Settlement Proposals in 1988. The ensuing process came to fruition on 29 April 1991, when the United Nations Security Council approved its Resolution 690. Resolution 690 established the elements of a Settlement Plan and provided for a timeline for their implementation, leading

up to a referendum for the self-determination of the Saharaoui, originally scheduled for January 1992.

The Settlement Plan had foreseen a referendum that would determine the will of the Saharaoui people, whether it be integration in Morocco or independence and statehood. For the purpose, voter eligibility would proceed on the basis of the Census drawn by the Spanish Administration in 1974 (that had accounted for the autochthonous population of the territory). The 1974 Census would be technically updated to exclude the deceased and determine those who would have become of age (18 years-o) to be eligible for the electoral roll.

The Settlement Plan provided for the voluntary repatriation of the refugees, so that they could vote within the province, a UN monitored cease fire, effective 1992, the cantonment of the Polisario troops in the lead up to the referendum (the so called Transitional Period) and the reduction of the Moroccan troops up down to a maximum of 60,000. The latter would be deployed along the Berm exclusively on a defensive posture. Meanwhile, there would be an exchange of prisoners of war, Morocco would release all political prisoners and the United Nations Secretary General would have the remit to suspend all legislation and stay all decisions by the Moroccan Government that could be detrimental to the application of the Settlement Plan. The Plan finally provided that, in the event the outcomes of the referendum were to be integration, the Polisario Front would demobilize and disband in four weeks from the date of the proclamation of the official result. In the event the Saharaoui were to choose independence, Morocco would have to withdraw both its troops and administration in six weeks.

II. The opinion by the international court of justice

On 16 October, the International Court of Justice rendered its Opinion on the sovereignty claims over Western Sahara as resulting from history and applicable international law. The Opinion had been requested by the United Nations General Assembly, on 13 December 1974, by way of its resolution 3292. In accordance with Resolution 3292, the Opinion, whatever the merits, would not prejudice the relevance of the principle of self-determination, as contained in Resolution 1514, to the final settlement of the dispute. The Court was asked by the General Assembly whether Western Sahara, prior to the Spanish colonization had been “terra nullius” and, if otherwise, what had been the ties between the territory and either Morocco or Mauritania or both. Pending the Opinion, Spain was to defer the referendum.

The legal case itself went back to 1961. At the time, Morocco requested Spain that the matter of sovereignty over Western Sahara be conveyed to the arbitration of the International Court of Justice. The Claimant thought it would be able to produce sufficient grounds to prove its legal entitlement. During the 60s, Morocco had to ride the wave of self-determination so prevalent in the United Nations then. However, once Spain had caved in to the demands of the General Assembly and announced a referendum for the self-determination of the Saharaoui, Morocco acted rather upon grounds that the question was one affecting its territorial integrity. In actual fact, it had always been thus, as in the 60s Morocco had a sovereignty claim over Mauritania itself and Western Sahara, both being part of South Morocco as the Kingdom understood it. Only in 1974 was it able to maneuver the United Nations to direct the International Court of Justice to look into the

sovereignty question, while preempting the referendum just in the nick of time.

The International Court of Justice had to affirm its own jurisdiction first, as the Spanish party contended that the Court was not statutorily competent with the argument that all differences arising between two states had to be referred by or consented to by both, i.e., Morocco and Spain. The Court rejected that argument and established its competence. It construed that it was not an adversarial case but one involving a legal finding necessitated for the conduct of the debate in the United Nations General Assembly. The Opinion of the Court, it argued, could not possibly prejudice the position of the Administrative power since it could only, if it would, determine pre-existing legal ties that would only, at any rate, be consequential for the post-colonial period.

The first question, that of whether the territory was “terra nullius” prior to the Spanish colonization (circa the 1940s) was quickly put to rest by the Court. It determined that it was not, since the Spanish Crown had staked a claim over Rio de Oro on grounds of those agreements with the local tribes mentioned above. This did not prejudge the answer to the second question: whether there were any ties between the territory and the neighboring states.

The Opinion of the Court gave short shrift to the arguments of both Claimants: Morocco and Mauritania.

Morocco premised its claim on the territorial continuity of Western Sahara relative to Morocco and upon the alleged historical sovereignty of the Sultans of Morocco and the Sherifian Monarchy over Western Sahara. As evidence of the foregoing, Morocco cited the allegiance pledged historically by the local tribes towards the Sultan, as well as an

assortment of international treaties wherein third parties (including Spain) had implicitly recognized Moroccan sovereignty.

The Court made quick work of the question of the geographical continuity argument. There would be one state per continent if that were to be taken literally. On the allegiance argument, the Court granted that some of the Saharan tribes had straddled the larger region of South Morocco and Western Sahara. Whereas some fractions of a particular tribe located in South Morocco might look up to the Sultan and feel some bond of allegiance in his regard, that bond would not necessarily extend South to other fractions of the same tribe.

The international treaties submitted by Morocco as evidence of acknowledgment by third parties of its sovereignty were, at best, ambivalent, but more often, reeked of forgery. The Arabic versions of many of those would systematically be at variance with the other party's language when identifying geographical applicability.

The Court concluded that Morocco had not asserted a continuing and effective authority over Western Sahara at any point. The instances of intermittent Moroccan influence over the province did not evince "animus possidendi" (or the willingness that it be considered a part of Morocco).

Mauritania had staked its own claim on the recurrence of alliances between Mauritanian and Saharaoui tribes. The Court met the argument head on, finding that sovereignty could not be premised on occasional federations of heterogeneous entities in which the federation would never be anything different from the sum of its parts.

The conclusion of the Court was unequivocal: "...the materials and information presented to (the Court) 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...and of the principle of self determination...".

Morocco quickly elected to construe that the mere discussion of "ties" of any sort, even of the irrelevant kind, was enough entitlement for it to annex the land. It invaded the territory shortly thereafter.

III. The population of Western Sahara

The Spanish colonization disrupted in numerous ways the existing societal fabric as had existed for many centuries. The nomadic ways of the population came to an end and urban life nudged out the subsistence economy of the nomads. Thereafter, the Moroccan occupation and ensuing exile of a large part of the Saharaoui, who went from a nomadic to a sedentary lifestyle and on to refugee camps in a generation, wiped out the traditional fabric of the Saharan society.

Ironically, the United Nations-led process of voter registration, with its emphasis on tribes and tribal elders, unearthed some of the elements of the social organization of the past. The Frente Polisario brewed at the ideological high water mark of the national liberation movements of the time, steeped in the Socialist paradigm and rhetoric. It never was particularly warm to those more traditional and hierarchical concepts to which Morocco, in turn, was partial. It is worth discussing the original social structure of the Saharaoui.

The largest most permanent social unit was the Tribe that, in that part of the world, is also known as Kabil. The Tribes break down into Fractions and the latter into Sub-fractions. Fractions and Sub-fractions go back six to eight generations. The smallest meaningful social structure is the Ahel, or family unit, that gathers the last three to four generations. The Head of the Tribe or Tribal Fraction is the Sheik or Cheij (plural Shiouk or Chiuuj). Every tribe has its own laws and deliberative bodies (the Assembly of Notables or Yemaa). The tribes are the sole structures at which the claim of sovereignty could be laid.

The tribe carries the name of its founder, both a means of ethnic (and sometimes religious) identification and of social legitimacy. Occasionally, a tribe could enter into compacts with other tribes or tribal fractions (or to subject them into a subservient role), thus coalescing into an "Asabah". Some of the latter would overlay with what is commonly known as "Kabils". The term can designate tribes or associations of tribes. In fact, some of the major tribes present in the territory (Erghibat, Teqna, Oulad Delim) are rather loose federations of tribes and, at that, ethnically diverse, all the more since Western Sahara has several layers of Berber, Arabic and even Black populations, much as Mauritania.

The Arab invasion of the territory in the IX century brought forth a social stratification in the Arabic manner. At the top of the ladder were those tribes that would devote themselves to warfare or study. Their ultimate source of legitimacy was the purity of their Arabic descent. Among those, the most important in the North were the Teqna (in actual fact an "Asabah", made of, inter alia, tribes such as Ait Lahsen and Izarghien), established and linked to some tribes in Southern Morocco. In the

South, Oulad Delim, had also some kinship with tribes in Mauritania. Down the social ladder, the Shepherd tribes were generally acknowledged as descending from the original Berber population.

Somewhat transcending this social make-up were the "Shorfa". They were generally thought of as descendants of the Prophet and, as such, were a religious category. Tribes such as the "Erghibat" or the "Arosien" belong to this category. Both these tribes represent, in their various sub-fractions, the most numerous populations of the Western Sahara desert beyond the coastal strip. It is important to underline that the designation Shorfa describe a tribal type. It does not designate a tribe or a federation of tribes.

IV. The condition of saharaui: identification

On 11 August 1988, the United Nations Secretary General (then Peruvian Perez de Cuellar) and the Special Envoy of the Chairman in Office of the OAU jointly submitted their "settlement proposals" to Morocco and the Frente Polisario. By 30 August, both parties had endorsed those proposals. On 18 June 1990, and upon that basis, the United Nations Secretary General submitted an Implementation Plan to the Security Council. Both elements, the Settlement Proposals" and the "Implementation Plan", are considered as whole as the Settlement Plan.

The Settlement Plan provided for a referendum for the self-determination of the Saharaoui and determined the eligibility to vote in the referendum. According to the Settlement Plan, as accepted by both parties and endorsed by the Security Council, only those individuals over 18 years old included in the 1974 Spanish Census (that found the population of the territory to be

73,497) could vote in the referendum. The Secretary General, in his report to the Security Council of 19 April 1991, proposed the establishment of an Identification Commission. The Commission was mandated, proceeding off the 1974 Census, to strike out the deceased since and to consider appeals by such individuals as considered themselves Saharaouis and claimed to have been excluded from the 1974 Census. That right of appeal would later that year be construed in a manner such that wholly overturned the original Plan.

It was on 19 December 1991. Secretary General Perez de Cuellar submitted another Report to the Security Council. It included, as an Annex, the Instructions for the Work of the Identification Commission. Chapter VII of the Instructions, entitled Instructions for the Consideration of Appeals to Participate in the Referendum, nearly resulted in the breakdown of the process⁵. Chapter VII contained the so-called Criteria for the Participation in the Referendum. It was established, critically, that the voters roll would include:

1. Individuals included in the updated 1974 Census
2. Those individuals who resided in the territory as members of a Saharaoui tribe in 1974 that the Census did not account for - which could be considered appropriate remedy for factual errors for which clear evidence could be produced.

Those two criteria were in point of fact corresponding to the original Plan as envisaged by both the parties and the United Nations over the previous three years. This was not quite the case with the following three.

3. Next of kin of the above: father, mother and children. *Prima facie*

this criterion is not all that different from Criterion 2 and can be chalked up as redress of technical errors. However, this opened the door to peculiar argumentations on population growth of the Saharaoui population left inside the territory after 1975 and, ultimately, to a wild number of appeals on the part of Morocco purporting to represent (and on behalf of) this group.

4. Individuals born to Saharaoui fathers who - the latter - would have been born in the territory. This Criterion is by far the most important. It inserted tribal links as a means to determine the condition of Saharaoui. It dramatically substituted the ethnic concept of tribe for the territorial of residence as the one underpinning the voter identification process. The 1974 would no longer be its basis, necessitated only of updating, but just one Criterion among several.

Criterion 4 met the Moroccan objections to the effect that, the Saharaoui population being nomadic, the number of persons present in the territory in 1974 would be contingent relative to the number of those that could be considered bona fide Saharaoui. Moreover, Morocco further argued that, in 1958, a Franco-Spanish operation, coded as *Ecouvillon*, had swept the remnants of tribes rising against the interests of these two countries in the greater region of Mauritania, Algeria and Western Sahara. Morocco held that many of the (supposedly) Saharaoui involved had gone north and into Morocco and concluded that this had been the reason why they had not been residing in the territory in 1974. Meanwhile, the ravages of drought over the years had, Morocco further contended, displaced an undetermined number of resi-

dents, as had the suppression of the population by the Spanish authorities.

The point of it all was that by 1974 a large part of the true Saharaoui population, so far as the Moroccan authorities could account for, was not residing in the territory, but within Morocco. Years later, tens of thousands of Moroccan residents would stream in before the Identification Commission claiming to be either exiles from those years or their children.

Prolonged droughts have always been a frequent occurrence in Western Sahara. However, no massive (or even significant) population displacements are on record. Moreover, many of the Appellants who contended to be relatives of those drought related émigrés cited seasons when no such droughts had occurred.

The other most favored historical argument was not much more coherent. The alleged sweep of troublesome Saharaoui following the Ecouvillon Operation did not go beyond the anecdote. The Spanish Administration was never a model of democracy but its impact on the territory had everything to do with the impingement of Western civilization on the thus far prevailing lifestyle (as discussed in Chapter III) and the ensuing urbanization. No displacements on account of repression or conflict took place until 1975/1976, as well documented history would have it.

Technically, Criterion 4 is puzzling. It would grant the right to vote to sons and daughters (who typically would have been born in Morocco or migrated with their parents) but not to their fathers. The latter, ex

hypothesis born in Western Sahara themselves, would transmit the condition of Saharaoui to their children but would not have it themselves, unless by way of fulfilling some other criterion. The concept that underpins this requirement is one that projects back to ethnicity. Absent a territorial connection with the province, the individual still has a chance to eligibility so long as there is a tribal connection, i.e., his/her father is a "Saharaoui" by virtue of the latter's ethnic background. Conversely, if the father does not belong to any such "Saharaoui" tribe, descendants are not to be granted the right to vote.

The overarching problem: the Criteria were supposed to determine who is a Saharaoui for the purpose of the referendum. Here was one of those Criteria which assumed that there was an original category of ethnic Saharaoui, tribes discretionary considered as indigenous to the territory whose members could be spread over neighboring states. If the Applicant could prove appropriate lineage (the means for it to be exceptionally hazy, since there are no public records as to that) his/her actual nationality or personal connection with Western Sahara was no longer of particular relevance. The identification of individual voters would slip into an identification of ethnic groups. The new twist would be confirmed by the next Criterion.

5. Individuals with a tribal background linked to the territory who would have resided in Western Sahara for a period of six consecutive years or at intervals for a period of twelve prior to 1 December 1974.

The rationale is anachronistic. It purportedly accounts for the no-

madic character of the population when it needs not, for it was no longer and it had not been for more than a generation in 1974. Not surprisingly, the next legal parsing revolved over the point in time from which the residence - continuing or at intervals - requirement would be operative. Morocco held that residence could be valid (for the indicated six or twelve year lengths) since the beginning of the Spanish colonization (1884!). The Frente Polisario argued that the initial dates ought to be those in which the neighboring countries became independent (1958, 1960 and 1962), since it was since then that the internationally recognized borders of the territory were established.

In the final analysis, the premise of this requirement, a nomadic lifestyle that would have left many people unaccounted for in 1974, necessitated time traveling as far as possible in the past. However, the start-up date was never determined.

V. The UN secretary general's notion of middle ground

On 28 July 1993, the United Nations Secretary General published a new Report. It contained, as an Annex, a document entitled "Interpretation and Implementation of the Criteria and Modalities for Identification as Annexed to the Report of the Secretary General of 19 December 1991". This gibberish really turned out to refer to an attempt to transaction - later to be known as the Compromise Proposal of the Secretary General - between the positions of Morocco and the Frente Polisario on Criteria 4 and 5, as described above. Morocco had been enthusiastic in its support for those Criteria, while the Polisario adamantly opposed them. The Compromise Proposal stipulated that, beside showing proof of

the relevant premises of either Criterion, the applicant had to fulfill the requirement of belonging to one of the Tribal Sub-fractions included in the 1974 Spanish Census.

Morocco, evidently, wanted to expand the voter list, as comprehensively as ethnic ties in the whole region would allow. The Identification Commission could find itself identifying North Africans from Ceuta to the Senegal River and from Cape Bokhadour to the Nile River if the implicit logic were to be followed down to its ultimate consequences. For its part, the Frente Polisario, while contesting the legitimacy of Criteria 4 and 5, would acquiesce to allowing the principle of rightful participation of individuals belonging to Sub-fractions so numerous represented in the 1974 Census as to be thought of as indigenous (which, for all intents and purposes, all but meant the cancellation of Criteria 4 and 5 as any different to Criterion 2, i.e., individuals who, in 1974 had been residing in Western Sahara as members of a Saharaoui tribe and had been overlooked by the Spanish Administration at the time.

The Compromise Proposal, splitting (not quite) the middle, limited eligibility to those whose Tribal Sub-fractions were indeed represented in the 1974 Census, whether numerous or sporadically. The Compromise Proposal was construed at the time as very partial toward the Moroccan position.

On an explanatory note: each individual listed in the 1974 Census was registered with his full name and the designation of Sub-fraction as a means of identification. There are 85 Sub-fractions thus mentioned in the Census. Each of them is assigned a key letter (from A through G) and a digit. Beside the thus designated Sub-fractions, there are three very heterogeneous group-

ings, for which the letters H, I and J are assigned. From the operational standpoint, the Compromise Proposal offered, rightly or wrongly, a conceptual solution for the Sub-fractions properly accounted for in the Census. It was not to be workable for the H, I and J groupings.

VI. Eligible voters in the referendum

Between 28 August and 25 October 1994, both Morocco and the Frente Polisario submitted the applications filed with either party (as the UN thought no better than delegating the gathering of applications to both parties to the process) to the United Nations Mission in Western Sahara (MINURSO). The figure as to the total number of applicants was not immediately transparent (the argument for non disclosure, as privately expressed by United Nations officials was all about the expediency of avoiding further embarrassment to Morocco - presumably since the number of applications submitted by her alone exceeded any prior estimate of the size of the Saharaoui population). However, it would later be possible to reconstruct the aggregate number of applications as well as the party that submitted them, on the basis of fragmentary data doled out subsequently by the United Nations⁶.

As for the aggregate number, in the Secretary General's Report of 5 November 1994, MINURSO was said to have processed and computerized 50,000 applications thus far. It was further indicated that the figure amounted to 21% of the total number. It was, therefore, to be inferred that about 238,000 would have been filed (in June 1995, a fact finding United Nations Security Council Mission estimated that figure to be around 233,000).

As to what party had submitted what, where, some information could be

gleaned from the Secretary General's Report of 30 March 1995. That Report accounted for the applications submitted in the occupied territory itself (by Morocco: 81,855); in the Tindouf Algerian desert area, where the refugee Western Saharan population has been since 1976 (by the Frente Polisario: 28,831); and in Mauritania, host to several thousand Saharaoui (by the Polisario Front: 14,568).

The next piece of the puzzle was to be found in the Report of the fact-finding Security Council Mission alluded to earlier. 10,850 additional applications had been submitted by the Frente Polisario corresponding to the nomadic Saharaoui population East of the Berm, in the minor swath of territory not occupied by Morocco.

The interest of this elaborated algebra is ultimately to discern the sloppily concealed fact that Morocco had submitted between 100,000 and 105,000 applications from individuals that actually resided in Morocco, as resulting from subtracting all other applications on aggregate from the total figure of 233,000 or 238,000. Moreover, adding up the applications from inside the territory itself, Morocco had turned up more than 180,000 applicants (almost three times as many voting age individuals as the entire population of the province twenty years earlier). This struck even the very sympathetic United Nations Secretary General, Boutros-Ghali, who decided the disjointed, partial and downright nonsensical presentation of the process that has been described. United Nations officials fanned out to plea with Security Council delegations not to seek any further elucidations or ask any questions, since, they would offer, the United Nations was trying to persuade the Moroccan authorities to withdraw some of the applications. They argued that more transparency would hurt

those efforts since Morocco could never trim the application batch if the numbers transpired and she had to lose face over it.

As had been the pattern before, and would continue to be in the future, Morocco did not yield in the least. But the United Nations kept on equivocating on the figures for years to come.

VII. Admissible evidence

All applicants had to prove his/her identity as well as his eligibility under the relevant Criteria. The organizing principle of the process was simple enough. The applicant had to appear before a MINURSO Identification team made up of United Nations officials. Each Identification team would operate in a variety of Identification centers established for roughly defined geographical areas in and adjoining the territory of Western Sahara. Often, most individuals belonging to the same Sub-fraction were called on to the same Center, as its members were identified sequentially. Identification teams, assisted by interpreters, rotated across different areas to offer less of a target for pressure brought to bear by either party. The proceedings were monitored by OAU observers, as well as by observers by both parties. Tribal leaders (Shiouk) were summoned as witnesses to the identity of the applicant, since they were supposed to know the members of the Sub-fractions they themselves belonged to. Those testimonies bore, in the final analysis, more traces of an adversarial procedure than of expert advice. The tribal leaders themselves were split between those left behind within the boundaries of the territory and those in exile along with the majority of the population. For each Sub-fraction there would generally be on notable sent by each party.

If the applicant was successful in proving both identity and eligibility, he would be registered in the provisional voter list. That list in itself was not public, nor disclosed to the parties, but the number of those that would make it in the list was conveyed to the parties as well as to the Security Council.

The decisions by the Identification Commission whether to include or exclude an applicant were not final, as stipulated in its mandate (Annex II to the Report of the Secretary General of 28 July 1993). An appeal procedure was provided for once all applicants had been interviewed and the general list made public. The appeals could be filed by the applicant whose registration had been turned down (the procedure would be called registration appeal procedure) or by an interested third party in the opposite case, i.e., seeking the rejection of a registered individual (challenge procedure).

During the first stage of the Identification process, between Fall 1994 and Fall 1995, there were eight operating Identification Centers: four in the Moroccan-occupied territory (Layounne, Boukhador, Smara and Dakhla, those being the main population sectors) and four others stretching along the refugee camps in the Algerian desert area of Tindouf with the very same names in mirror-like correlation with those four. As it happens, the refugee camps are organized in districts whose designations take after the main enclaves of origin of the refugees themselves. Later, other Centers were opened in Layounne (territory), Smara (Tindouf), Nouadhibou and Zouerat (Mauritania), Gouleimin and Tantan (Morocco) and Seragna and Sidi Ghasem (Northern Morocco), as the most controversial and far-flung groups of applicants were to be interviewed.

The question of the relevant evidence was pivotal. Those applicants included in the 1974 Census, and their first-degree direct relatives, had only their identity to prove, since the Census could not possibly be challenged. Conversely, other applicants had to prove both their identity and their eligibility, as per one of the other Criteria. Moreover, the applicants claiming eligibility under Criteria 4 or 5, had further to show evidence of their ties to one of the Sub-fractions represented in the 1974 Census (not an altogether clear-cut issue as will be discussed later).

Written exhibits and oral testimony by the Shiouk were chiefly the means to produce evidence before the Identification Commission. Among the former, the documents issued by the Spanish colonial Administration were conclusive in and of themselves: identification cards, drivers licenses as well as Certificates of Birth, Marriage or Death, registered with those Spanish authorities.

Most of the applications filed with the Moroccan side were lacking in back up documentation. From the outset, Rabat sought the recognition of oral testimony by the Shiouk as similarly decisive. Moroccan authorities would claim that, owing to the nomadic character of the Saharaoui society, many claimants would have been in the fringes of and sidelined by the Spanish-administered province. The depositions of the Shiouk ought to prove not just the identity of the applicant, but also the applicant's legitimacy under certain criteria (as, for instance, under Criterion 4, by means of testimony over the tribal ties and the place of birth of the applicant's father).

As for the selection of the Shiouk to be summoned for testimony, there were two lists that could confer that competence: first, the list of the 193 Shiouk elected in 1973, in the elections to that purpose convened at the time by the

Spanish Administration; secondly, the list of the 226 individuals who declared to be Shiouk at the time of their registration in the 1974 Census (many names are in both those lists).

Authorities in Rabat challenged the lawfulness and value of using the 1973 list. They contended that not all Shiouk were present in the territory in that year, that Shiouk had traditionally been co-opted and not elected to that station and that the 1973 mandate would have expired five years later. The Frente Polisario held much the opposite to these arguments. Both sides embraced positions entirely consistent with their respective views on the Census as a whole.

The lists dating back to more than twenty years earlier, not a small number of those Shiouk would have either died since become infirm since. Even more importantly, many Sub-fractions and their notables would have split following the Moroccan occupation. Elaborate schemes were hashed out to account for those circumstances. In practical terms, though, each side would send their own notables (whether included in the original 1973 list or not, whether recognized as Shiouk by the other party or not), who showed themselves very likely to represent the sending party as a matter of course, in a way providing mutual checks between the two sides.

VIII. Crisis: the controversial tribes

As many as 100,000 of the applications filed with the Moroccan authorities (see Chapter VI), corresponded to individuals claiming to belong to tribal groupings that aroused a great deal of controversy. Some 50% of those applications had been filed outside the territory itself and the other half by (or on behalf of) people currently living within.

Those applications were the true Gordian knot of the process. The tribal categories thus referred to (and their code in the 1974 Census):

H: Northern Tribes. These were loosely related to tribal federations such as the Techna. Their own lineages were rather diverse both in relation with the latter and among themselves.

I. Shorfa. A true ragbag. Not even an ethnic concept. As explained in Chapter II, the designation fit a number of tribes or parts thereof who claimed to be descendants of the Prophet's lineage.

J. Southern and Coastal Tribes. This is yet a similarly heterogeneous group. They are associated in varying degrees with Mauritanian tribes.

All three categories point to the same reality. When undertaking the 1974 Census, the Spanish colonial Administration accounted for all those present in the territory, even those whose who belonged to tribes alien to the territory or of Sub-fractions that could not be identified. It pasted them together around rough geographical or social definitions. But it did not provide for the specific Sub-fractions (the very concept on which the Secretary General's Compromise Proposal hinged upon) to which they belonged.

Despite the centrality of this matter, the United Nations, again, scarcely produced any data as to the breakdown of the applications within that questionable framework. The Frente Polisario, though, provided its own figures, starting from the aggregate number of individuals belonging to all three groupings that had been originally included in the 1974 Census: 15,816.

According to that source, the total number of applications submitted upon the claim that the applicant belonged to

any of those groupings was 120,262. 107,888 of them would have been submitted by Morocco. In other terms, roughly the totality of those applications, other than the ones submitted by the individuals included themselves in the original 1974 Census, had been submitted by that party. If that algebra held, that would imply that more than half of the total number of applications would be premised on tribal affiliations outside the framework of the Compromise Proposal, which represented a small fraction of the 1974 Census total figure.

The traditional Moroccan position on the matter was such that all applicants would have the right to argue their case before the Identification Commission. It would behoove the latter to decide. The Frente Polisario would contend that the Secretary General's Compromise Proposal had only foreseen members of Sub fractions identified in the 1974 Census as potential voters. That was not the case for the H, J categories, and I that do not refer to Sub-fractions. They do not refer to tribes for that matter. The Polisario concluded that any application that would not show the proper Sub-fraction affiliation should be rejected off hand. With regard to the three contested tribes, it would only accept the identification of such applicants as were included in the 1974 Census and their immediate relatives.

In the summer of 1995, even the United Nations Security Council thought that the Moroccan authorities had stretched somewhat the submission process. It called on those authorities to vet the applications filed with them with the aim to trim the caseload for the identification Commission. Despite some mixed signals, Morocco never quite got around to doing it.

The process stalled in October 1995 over this set - and its various subsets -

of disputes. The United Nations Secretary General, Boutros-Ghali allegedly said then that he had always thought a referendum for the self determination of the Saharaouis all but impracticable. He had held hope, though, that the identification process could be completed. The parties would have thereafter negotiated a settlement on the basis of the outcome. The premise there seemed to be that the counting of the population defined the scope of the problem to be hammered out on the negotiating table.

The Frente Polisario feared, at the time, that the controversial tribes would not just be processed, but be processed in such a manner that the standards of evidence would be lower relative to other applicants. This was so because persons claiming to belong to the contested groups could be identified by just one Sheik, as opposed to two in most other cases. Since most of those individuals hailed from Morocco proper - even on Moroccan admission - very few could draw a corresponding Sheik from the Saharaoui side. Thus the identity of Morocco filed applicants (many of them living outside the territory and affiliated with tribes whose ties to Western Sahara were questionable) would fundamentally be proved by way of oral testimony as born by a Moroccan side notable.

Polisario leaders concluded that the process would be a sham, intended to either inflate the voter list, so as to guarantee integration in Morocco, or to force them out of the process altogether. Since the United Nations has such a puzzling prestige as a repository of international legitimacy, a Polisario walkout would have spelled international condemnation of the Movement and perhaps conferred that "legitimacy" on a Polisario-free referendum, organized all the same by the United Nations.

In late 1995, a draft Resolution was introduced before the United Nations Security Council. The draft endorsed the identification of the controversial tribes precisely in the manner feared by the Frente Polisario. The latter was poised to break the cease-fire if the Resolution was carried. Algeria, a long and fast standing ally of the Saharaoui Movement as well as one of the Minurso seats in the region, threatened to end United Nations presence in her own territory. The Organization of African Unity (OAU), theoretical cosponsor of the Settlement Plan, also denounced the move.

Eventually, the notion, inherent to the draft Resolution, that the process could continue without one of the parties to it, was too much to bear for many of the Security Council members. The draft was not even assured of getting the required majority (9 votes out of 15). It was withdrawn.

The process came to a prolonged halt. Minurso would continue on for the next year and a half but nothing much happened until 1997, when United Nations Secretary General, Kofi Annan, appointed James Baker as his Envoy to deal with a question that had proved as intractable to him as it had been for his predecessor, Boutros Boutros-Ghali.

IX. Epilogue

Upon his appointment in June that year, James Baker staged various rounds of dialogue between the two parties under his own chairmanship, effectively jump-starting the process yet again, and yet again in staccato fashion.

Through the next four years, all applicants would end up having their day before the Identification Commission. All 244,643 of them, as it was known only in 2001, once the identification had

been effected, and the provisional voter list completed, i.e., six years after those applications had been originally submitted. The Identification Commission found 86,425 applicants eligible. The process bogged down again upon the appeal of nearly every one of those excluded - around 130,000. Since the appealing process was a red herring for a host of overarching political problems - that come down to want of willingness to ever have any referendum - it has never been resolved but the question might be moot now.

And thus the Identification Process was never finalized, as the parties switched positions regarding an appeal procedure for the applicants excluded from the provisional voter list. Once the Frente Polisario relented on the question of shuttling those groups back before the Identification Commission, Morocco affected to believe the process dead anyway and developed a keen interest on exploring alternative tracks, not one of them ever to be satisfactory unless dispensing with even the slightest odds of compromising her hold of the territory.

This, in fact, was the unfailing pattern of the United Nations led process in its entirety. A story of one side retreating on its stated positions and another unable to take yes for an answer. The United Nations unable to stick to its own legality, shifting its ground at every juncture with untoward partiality, cloaked in the usual language of compromise. The non-enforcing and demagogic side to the United Nations is not just at work on very public dossiers, but all the more in semi-secretive ones.

Thereafter, the United Nations Security Council was seized with a new proposal by Mr. Baker. It was called "Peace Plan for self-determination of the people of Western Sahara". Under its terms, the 86,425 voters declared eligible (generally recognized as likely to support Frente Polisario officials) would elect self-government institutions for the territory. Those institutions would have authority over a wide range of issues, excluding foreign relations, defense, currency, customs and telecommunications, to name the most significant, that would be within the remit of the Kingdom of Morocco. Five years later, a referendum of self-determination would be staged, the question to be decided being final status and the range of options being independence, autonomy within Morocco and downright integration in the Kingdom. But the rules of voter eligibility would change then. To the original list of 86,425 voters, would be added all those Moroccan settlers who have resided in Western Sahara since, at least, 30 December 1999⁷ (about four or five times that number which, as the thinking goes, would vote overwhelmingly for integration in Morocco).

The implementation of this Peace Plan might prove as maddening as that of the Settlement Plan. And to best illustrate the point, the Settlement Plan itself is also theoretically on the table too, along with options such as partition of the province.

But then, as has been said, the United Nations is an island surrounded by reality.

Notes

¹ Both military occupations, by Morocco and Indonesia, respectively, took place in 1975, both involved non-Western colonial powers pitted against populations vying for self-determination and both have made the rounds of United Nations brokerage over three decades.

² Then called Organization for African Unity (OAU).

³ The people of Western Sahara are referred to both as Saharans or Saharaoui. They refer to themselves in the latter manner.

⁴ The time frame is not arbitrary as the original Settlement Plan, of which the Identification Process is a part, ceases to be the only political frame at that point. The history since is alluded at the end.

⁵ It did not, to a very large extent, because the Polisario Front thought its position desperate at a time when President Boudiaf of Algeria, later assassinated, warmed to Morocco, potentially setting Frente Polisario up for defeat.

⁶ But only really disclosed in 2001, as it is mentioned farther down.

⁷ That is the date of publication of the provisional voter list by the Identification Commission.