

*Secession of States and Self-determination in contemporary International Law*

The crisis at Guerguerat and the escalation of the Western Sahara Conflict

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**Abstract:** This paper analyses two crises which occurred in the town of Guerguerat, and their effect on the development of the conflict in Western Sahara. Guerguerat is situated in the south-west of Western Sahara, beyond the territory occupied by Morocco, in what Saharawi nationalism considers as "Liberated Territories". It is thus understood that, in the summer of 2016, the Polisario Front considered as a provocation the deployment of some troops of the Moroccan Gendarmerie, together with workers who were going to asphalt the stretch of track which runs between Guerguerat and Mauritania. The second crisis, in 2017, was motivated by the announcement of the passage of a rally through Western Sahara. This work analyses the most relevant facts of both crises, the determining factors in the short, medium and long term, the reactions of the United Nations and other relevant actors, as well as the possible future scenarios that were opened due to the crisis.

**Keywords:** International crisis - Western Sahara Conflict - United Nations crisis management policy - MINURSO - Third party mediation - Self-determination of peoples - European Union External Action - Spanish Foreign Policy

(A) INTRODUCTION

The Western Sahara Conflict is, in essence, a case of decolonization in which the people's right to self-determination must be applied. However, this decolonization has not yet occurred. The colony itself is, *de jure*, Spanish but the Spanish authorities withdrew from it in 1976. The result was a war that lasted until 1991. From that point forwards, attempts were made to resolve the conflict peacefully, but they were unsuccessful. As such, over forty years later, the conflict is still active and it seems as though there is no short- or medium-term solution in sight, unless there is an unexpected turn of events.<sup>1</sup>

The conflict is between two parties: Morocco and the Polisario Front. The former maintains that the land forms part of its territorial integrity. The latter defends its self-determination and the independence of the Sahrawi people, and proclaimed the Sahrawi Arab Democratic Republic in 1976, which has been recognized by eighty States, mostly Africans, Latin Americans

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<sup>1</sup> For an overview of the Western Sahara conflict, see: J. Soroeta, *El conflicto del Sahara Occidental, reflejo de las contradicciones y carencias del derecho internacional* (Universidad del País Vasco, Bilbao, 2001); J. Ferrer Lloret, *La aplicación del principio de autodeterminación de los pueblos. Sahara Occidental y Timor Oriental* (Universidad de Alicante, San Vicente del Raspeig, 2002); J. Soroeta, 'The Conflict in Western Sahara after Forty Years of Occupation: International Law versus Realpolitik', 59 *German Yearbook of International Law* (2016), 187-221.

and Asians.<sup>2</sup> But there is also a Maghrebi aspect, seeing as the conflict is one of the key points in the conflictive dynamic of the region, particularly that occurring between Algeria and Morocco. It is also relevant to Spain and the European Union. Spain's interest stems from it still being, *de jure*, the colonial power and because Spanish civil society feels particularly responsible for it. For the European Union, it is because although Spain is a Member State, it maintains relations with Morocco. Said relations are controversial because they could be contrary to the values of the Union and because there are a series of bilateral agreements which are applied in Western Sahara.

For years, the conflict has been at a stalemate. However, certain recent events are making us view the situation in a new light. In this work, we will analyse two such events which took place near the village of Guerguerat. The events comprise two crises, one of which began in August 2016, and the other towards the end of 2017. On both occasions, the fragile and precarious state of the Western Sahara Conflict was made evident. This was so much so that, in our opinion, we are no longer facing a stalemate situation but rather an escalation of the conflict.

We therefore believe it is in our interest to begin by analysing the unfolding of the events in both crises. But it is also worth analysing the causes and assessing whether there will be possible consequences in the future development of the conflict.

In short, the aim is to analyse certain occurrences which may have had a great repercussion on the evolution of a conflict which directly affects and interests Spain, the European Union and even the entire international community.

## (B) THE CRISIS

### (1) The 2016 crisis in Guerguerat

The trigger of the crisis occurred on 14 August 2016, when troops from the Moroccan Royal Gendarmerie and Moroccan civil servants crossed the buffer strip near Guerguerat.<sup>3</sup> Said village is located to the southwest of Western Sahara, near the coast, about five kilometres from the country's southern border with Mauritania. But the most relevant aspect is that it is alongside the buffer strip, outside of Moroccan occupied territory, in what the Sahrawi supporters of independence consider as "Liberated Territories."

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<sup>2</sup> Although in most of the instances addressed in this work, such as the United Nations or the Court of Justice of the European Union, they refer to Polisario Front. And that is why we have chosen to make references to the Polisario Front.

<sup>3</sup> Cf. *Report of the UN Secretary-General on the situation concerning Western Sahara*, S/2017/307, 10 April 2017. par. 2-15.

According to the explanation offered to the United Nations by the Moroccan authorities, the deployment took place in order to clear the area of potential undetonated mines and explosive artefacts, and to asphalt the section of road running from the wall to Mauritania. The Moroccan authorities could have studied the possibility of turning to MINURSO for the cleaning labours, as they have done on previous occasions.<sup>4</sup> However, the truth is that the relationships between Morocco and MINURSO were not at their best at that time, as we shall see in a later section.

We have yet to see whether this movement of troops in the buffer strip could constitute a violation of the Ceasefire Agreements. In principle, as the troops were not strictly military, the deployment does not necessarily constitute a ceasefire violation, unless it is understood that the construction of the road could serve a dual purpose, and unless we consider the Moroccan gendarmes to be military troops, seeing as the Royal Gendarmerie is a police force with military status.<sup>5</sup> Another aspect is the opportunism and whether the deployment could suppose a provocation. In any event, it is not rare for Moroccan forces to pass through the area without this giving rise to any incidents.<sup>6</sup> However, on this occasion, something changed and the day after the Moroccan deployment, 15 August 2016, the Polisario Front responded by taking positions around Guerguerat, a little more than 100 metres from the where the Moroccans were based. The argument of the Polisario was that they were acting in order to impede a violation of the Ceasefire Agreements.

In the following months, the crisis intensified. In December 2016, the Polisario reinforced its positions in Guerguerat and even made incursions into the Cabo Blanco peninsula to the southwest, an area which until that point had been a sort of “no man’s land.” And in February 2017, it started to set up roadblocks on the road joining Guerguerat with Mauritania, stopping the passage of vehicles, mostly trucks, which were travelling with maps on which Western Sahara was shown as part of Morocco.

Despite all this, the point of no return was not reached. On 26 February 2017, Morocco announced that it would withdraw its troops on the condition that the Polisario did the same. This manoeuvre by the recently appointed UN Secretary General, Antonio Guterres, bore fruit

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<sup>4</sup> There is, occasionally, cooperation on the destruction of mines and explosive remnants of war between MINURSO and Morocco. The most recent was in April 2013: *Report of the UN Secretary-General on the situation concerning Western Sahara*, 8 April 2013 S/2013/220, par. 43. On other occasions, Moroccan army had simply notified to MINURSO about this kind of activities: *Report of the UN Secretary-General on the situation concerning Western Sahara*, 10 April 2014, S/2014/258, par. 4.

<sup>5</sup> The point 3.1 of the *Military Agreement No 1*, states that in *buffer strip*, “The entry of RMA [Royal Moroccan Army] and FPMF [Front Polisario Military Forces] personnel of equipment, by ground of air, and the firing of weapons in or over this area, is prohibited at all times and it is a violation”.

<sup>6</sup> Mora Tebas, ‘*Control de fronteras en el espacio sahelo-sahariano: el caso de Mauritania*’, *Instituto Español de Estudios Estratégicos*, Documento Marco No 15/2015, 34 p. 7.

and on 29 April 2017 – the day before the UN would debate the renewal of the mandate of MINURSO – the crisis was concluded with the withdrawal of the Polisario troops.

However, this crisis resolution did not put an end to the deterioration of the situation in Western Sahara. By the end of 2017, a new crisis had begun, also in Guerguerat, and it has not been resolved at the time of writing these pages.

## (2) The 2018 crisis in Guerguerat

As regards the second crisis in Guerguerat, which began at the end of December 2017, the trigger was the announcement of a new Polisario deployment of supposedly unarmed elements, who had the objective of stopping the passage of a rally which would pass through Western Sahara. This deployment took place on 4 January 2018, with the establishment of an “observation point.” In response, Morocco deployed military forces (troops, armoured vehicles, combat vehicles and artillery) and its air force patrolled the skies in the area with orders to respond to any provocation.

With some difficulties, the rally was able to follow its planned course but the situation did not improve. The Polisario did not withdraw from the area and the deployment and reinforcement of Moroccan forces across the buffer strip did not only take place in the area of Guerguerat, but there were also news of a deployment taking place towards the northeast of Western Sahara.<sup>7</sup> On 22 April 2018, Polisario Front forces retired 16 kilometers southeast to Guerguerat, but the tension still continues.<sup>8</sup>

The tension has remained high and the more or less habitual episodes in a tense environment have been taking place: incidents in which MINURSO was involved<sup>9</sup>, news about the buying

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<sup>7</sup> United Nations offers little information about this second crisis (S/2018/277 cit. par. 3-16 and 34-39). So we had to check press media in order to collect further data. E.g.: A. Amslal, ‘Sahara: feu vert pour des frappes aériennes contre Le Polisario’, *Le 360*, 11.04.2018; Magreb Arabe Press, ‘Sahara: le Maroc ‘prêt à tout’ pour contrer le Polisario au delà du berm de défense’, *Le Desk*, 02.04.2018. J. Maíz Sanz, ‘Marruecos despliega al sur de su territorio sus potentes lanzacohetes chinos Norinco PHL 03’, *Defensa.com*, 19.04.2018.

<sup>8</sup> Report of the Secretary General on the Situation Concerning Western Sahara, S/2018/889, 3 October 2018, par. 2, 4.

<sup>9</sup> On 16 March 2018, Polisario stopped MINURSO patrol, by shooting into the air, with no further consequences: *Point de presse quotidien du Bureau du Porte-parole du Secrétaire général de l'ONU: 19 avril 2018*, 19 April 2018.

of weapons<sup>10</sup>, military manoeuvres<sup>11</sup> and mutual accusations<sup>12</sup>. However, for the time being, the point of no return has not been reached.

(C) THE SHORT- AND LONG-TERM CAUSES. THE FUTURE SCENARIOS THAT MIGHT COME TO PASS

In this section, we will start by analysing the factors which, in the short and long term, have contributed to the breakout of the crisis. As previously indicated, the trigger or immediate cause of the 2016-2017 crisis was the deployment of Moroccan troops beyond the wall, in the buffer strip which the Polisario considers to be liberated territory. And, in terms of the 2018 crisis, it was the passage of a rally through Western Sahara. However, we wish to delve further into the analysis of these causes. Therefore, in the first subsection we will analyse the short term causes and in the second section we will address the long term causes. In some cases, we need to indicate various contexts and factors: some causes are immediate, but others are circumstantial whilst still being structural to the conflict. As a general conclusion, in contrast to what is usually said, the Western Sahara Conflict is not at a standstill or in a stalemate; rather it is in a state of gradual deterioration.

Next, in the third subsection, we will look at the possible future scenarios which may come to pass. We will close this section by commenting on the lack of a reaction from the International Community.

(I) Short-term causes

We can highlight four short term causes: MINURSO was not at full operational capacity when the crisis broke out; the ruling of the Court of Justice of the European Union on the Agriculture Agreement between the EU and Morocco; the declarations of the Moroccan authorities about the Cabo Blanco peninsula; and the change in the management of the Polisario Front.

The operational problems of the MINURSO are long-standing. Its Peace Operation, titled the “Misión de Naciones Unidas para el Referéndum en el Sáhara Occidental” (United Nations

<sup>10</sup> The news about arms purchasing may be true, rumors or fake news, but nevertheless they contribute to tension: J. Maíz Sanz, ‘Marruecos negocia adquirir una docena de F-16 de última generación’, *Defensa.com*, 31 de mayo de 2018; ‘Iran denies Morocco accusation of Polisario arms delivery’, *Daily Mail*, 2 May 2018.

<sup>11</sup> “Ejército marroquí hizo maniobras cerca de Argelia simulando agresión exterior”, *El Confidencial*, 23 May 2018.

<sup>12</sup> An e. g. of Moroccan complaints: ‘Marruecos se queja ante la ONU contra recientes ‘acciones’ del Polisario’, en *La Vanguardia*, 20 May 2018. The Polisario Front answered by an official statement: “Frente POLISARIO condemns Moroccan false, shameless allegations”, in *Sahara Press Service*, 16 May 2018.



Mission for the Referendum in Western Sahara), encountered obstacles from the moment it was launched in 1991. Its initial objectives consisted of supervising the ceasefire between Morocco and the Polisario, creating a census of voters and organising a self-determination referendum in which the Western Saharan people could decide between independence or integration into Morocco.<sup>13</sup> As the initially planned referendum could not be held, given that the census was already created, and as there was no plan to resolve the conflict, the work of MINURSO was reduced to supervising the ceasefire. And it encountered numerous obstacles even in this task.

The most relevant aspect of the 2016-2017 Guerguerat crisis, an aspect which led to the almost complete lack of operativity of MINURSO at that specific time, occurred after UN Secretary General Ban Ki-Moon travelled to the area in March 2016. During his visit to the Tindouf camps, he made statements in which he said that Morocco was an occupying force in Western Sahara. In response, Morocco forced the majority of MINURSO's civil servants to leave. Given that the work of the civil servants had to be covered by the Military Unit, the latter stopped being able to efficiently carry out its task as a deterrent in the supervision of the ceasefire. MINURSO would not recover operativity until April 2017.<sup>14</sup>

Another immediate factor, in our opinion, was the change in management of the Polisario Front. May 2016 saw the death of Mohamed Abdelaziz, who had been the Front's General Secretary since 1976. On 9 July 2016, his successor was named: Brahim Ghali, who was previously the ambassador in Algeria and the Front's representative in Spain. His management style was different to that of his predecessor. We can only speculate about how Abdelaziz would have reacted to the Moroccan deployment in the summer of 2016. Conversely, we can compare the way Ghali acted in the face of the passage of the 2018 rally to how Abdelaziz reacted to the Paris-Dakar Rally passing through Western Sahara in 2001. On that occasion, the Polisario practically limited itself to verbal protests.<sup>15</sup>

Another potentially relevant aspect was the rulings of the General Court (December 2015)<sup>16</sup> and the Court of Justice of the European Union (December 2016)<sup>17</sup>, after an appeal presented

<sup>13</sup> The objectives of MINURSO were established in two UN Secretary General Reports to the Security Council, in 18 June 1990 (S/21360) and in 19 April 1991 (S/224464). See also J. Soroeta Licerias, *El conflicto del Sahara Occidental... cit.*, 258-328.

<sup>14</sup> Doc. S/2017/307, cit, par. 14.

<sup>15</sup> Report of the Secretary-General on the situation concerning Western Sahara, S/2001/148, 20 February 2009, par. 3-7.

<sup>16</sup> Judgement of 10 December 2015, Frente Polisario v Consejo, T-512/12, EU:T:2015:953. For an analysis of this judgement, see R. Gosalbo Bono, 'El Frente Polisario, las normas del derecho internacional y el derecho de la Unión Europea. Apuntes en torno a la sentencia del Tribunal General, de 10 de diciembre 2015, T-512/12, Frente Polisario/Consejo', 53 *Revista de Derecho Comunitario Europeo* (2016), 21-77.

<sup>17</sup> Judgement of 21 December 2016, Consejo v Frente Polisario, C-104/16 P, EU:C:2016:973.

by the Polisario Front for the annulment of the Agriculture Agreement. The main result of these proceedings was that the agreements could not be applied to Western Sahara. In terms of consequences, the main one was the opening of a new dimension in the conflict, because it gave a new, legal “weapon” to the Polisario Front, for whom both courts recognised active legitimacy. This is now being used in courts of the European Union Member States as well as in non-member countries – e.g. the Republic of South Africa – seeing as the CJEU rulings are becoming a legal reference point. Furthermore, another of the rulings’ consequences on the conflict was the creation of worry and nervousness among Moroccan authorities, who needed to do something to counteract them.

## (2) Long-term causes

In addition to analysing the trigger and some of the factors which, in a more immediate way, may have contributed to the outbreak of the crisis in Guerguerat, we believe that our study must be completed with an analysis of the deeper causes.

The main one of these causes is the lack of a solution to the conflict. Since 2003, the UN has not proposed any solutions. In said year, it put forward the Baker Plan: five years of self-rule for Western Sahara in Morocco and a referendum with the voters from a broader census.<sup>18</sup> The official positions of the involved parties as regards the plan have been the same since 2007: Morocco suggests the concession of a five-year period of an autonomous regime, after which there will be a confirmation referendum. Meanwhile, the Polisario suggests a formula inspired by Baker II Plan.<sup>19</sup>

This has produced a change in the United Nations’ role in the Western Sahara Conflict. Up until 2003, it had played the part of mediator. Since then, it has been limited to offering good offices and it is no longer as concerned with the conflict.

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<sup>18</sup> In its Resolution 1495 (2003), 14 July, UN Security Council expressed a commitment for Baker Plan as a solution for the conflict, but it did not enforce it upon the parties. As a result, the refusal of Morocco forestalled the implementation of Baker Plan. See J. Ferrer Lloret, ‘El conflicto del Sahara Occidental durante 2003: la Resolución 1495 (2003) del Consejo de Seguridad de las Naciones Unidas’, 55(2) *Revista Española de Derecho Internacional* (2003), 1083-1089; J. Soroeta Licerias, ‘El Plan de Paz del Sahara Occidental, ¿viaje a ninguna parte?’, 10 *Revista Electrónica de Estudios Internacionales* (2005), 8-14.

<sup>19</sup> Both proposals were submitted to UN Secretary General: Letter dated 11 April 2007 from the Permanent Representative of Morocco to the United Nations addressed to the President of the Security Council, UN Doc. S/2007/206. The proposal of the F. Polisario was submitted by the Permanent Representative of South Africa to the UN: Letter dated 16 April 2007 from the Permanent Representative of South Africa to the United Nations addressed to the President of the Security Council, UN Doc. S/2007/210.

Another aspect of the deterioration of the situation in the area is found in the camps and is caused by a reduction in humanitarian aid as well as by the unsatisfied aspirations of the new generations of Saharan refugees in the face of the lack of a conflict resolution.<sup>20</sup>

Furthermore, we must take into consideration that the personal situation of a large proportion of the Sahrawi people has been deteriorating as well: both that of the refugees and that of those who live in the part of Western Sahara that is occupied by Morocco. Thusly, the refugees in the Tindouf camps have seen a reduction in the humanitarian aid they receive. This is due, in part, to the revision of the concession criteria and the calculation of the number of refugees supported by UNHCR, the WFP and other donators, such as the European Union. It is also, in part, a consequence of the accusations of the diversion of aid, and the economic crisis of 2007 has had an influence as well.

For the Sahrawi who live in Western Sahara under Moroccan occupation and who are opposed to it, the situation has also worsened. Violations of human rights and fundamental liberties have been taking place since the start of the conflict, but they have become more prominent since the decade which began in the year 2000. It is true as well that there are allegations of human rights violations in the refugee camps but this has no point of comparison. We even have indications that the situation may worsen for those Sahrawi who have accepted and even supported the occupation, or who have been able to remain indifferent. This is a result of the reduction in subsidies, the lack of job opportunities and the alteration of the demographic equilibrium in Western Sahara.<sup>21</sup>

The factor related to the situation of the population may have various consequences. The human rights violations may, for example, contribute to the escalation of the conflict. A case in point, is that certain events, such as the dismantling of the Gdeim Iziq protest camp, coincided with the holding of rounds of negotiations and they were therefore used as weapons

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<sup>20</sup> The unsatisfied aspirations of the new generations of Saharan refugees are one of the issues addressed in the Reports of the UN Secretary Generals to the Security Council. As an example, the Report of March 2018, doc. S/2018/277 cit, par. 20. See also H. Armstrong, 'The Youth Movement in Sahrawi Refugee Camps', *Commentary*, in *International Crisis Group*, 25/04/2018.

<sup>21</sup> For an overview of Human Rights violations in Western Sahara, see: J. Soroeta Licerias, 'La violación de los derechos humanos en los territorios ocupados del Sáhara Occidental. Especial referencia a los mecanismos de control que ofrece el Derecho Internacional para su control', 4 *El Vuelo de Ícaro* (2003), 9-25; J. A. González Vega, 'El respeto de los derechos humanos en el Sahara Occidental: cuestiones de Derecho Internacional', in F. Palacios Romeo (coord.), *El derecho a la libre determinación del pueblo del Sahara Occidental. Del ius cogens al ius abutendi* (Thomson Reuters/Aranzadi, Pamplona, 2013), 79-109; J.M. Martín Morillo/ G. E. Arbesú Sancho, 'Observación judicial. Procesos contra defensores de derechos humanos saharauis. Vulneración de la tutela judicial efectiva', in F. Palacios Romeo (coord.), *op. cit.*, 231-254; M. Ollé Sesé, 'Violación de los derechos humanos en el Sahara Occidental y jurisdicción universal', in F. Palacios Romeo (coord.), *op. cit.*, 337-376; C. Faleh Pérez/ C. Villán Durán, 'La situación de los derechos humanos en el Sáhara Occidental ocupado', in Vv. Aa., *Sahara Occidental. Cuarenta años construyendo Resistencia* (Pregunta, Zaragoza, 2016), 147-234.



to provoke the other party. The deterioration of the situation for the Sahrawi people may have yet another consequence: a sense of weariness towards their leaders, as has been reflected in the various reports by the UN Secretary General. In fact, the late Secretary General of the Polisario Front, Mohamed Abdelaziz, indicated on numerous occasions that the young Sahrawi people in the camps were increasingly in favour of resuming the hostilities.

Lastly, we must make a brief reference to the regional context, that of the Maghreb –not forgetting the neighbouring Sahel– as marked by the Arab Springs, the changes in political regimes and the rise of groups who use Islamism as their flag, to cite just the most relevant aspects of the last decade. The Western Sahara Conflict is not a regional one, but the dynamic in the zone has had a very negative impact on said conflict and has contributed to the impossibility of finding a solution. Traditionally, it has been the conflictive dynamic in the Maghreb, particularly the enmity between Algeria and Morocco, which has affected the Western Sahara Conflict in a negative manner. That said, we should not obviate other regional level factors such as the potential consequences of the “Arab Springs,” which the Gdeim Iziq protest camp regarded as the first relevant mobilisation; the expansion of the aforementioned regional framework; and the situation of Sahel, which may also have an influence on the development of the conflict.

### (3) What future scenarios might come to pass?

International crises can have various results. The patently obvious result is that there will be an increase and escalation in the tension, leading to armed conflict. This occurred, to cite a classic example, in the Sarajevo Crisis or the July Crisis of 1914 after the assassination of Archduke Franz Ferdinand of Habsburg, a crisis which led to the outbreak of the First World War. But they can also cause the parties in the conflict to pause and reflect, thus leading to a *détente*, as occurred with the 1962 Cuban Missile Crisis. In the case of the Western Sahara Crisis we are analysing in this work, we should distinguish between the 2016-2017 crisis and that of 2017-2018.

As regards the 2016-2017 crisis, we could deem it to be concluded after the withdrawal of the Polisario from the area in April 2017. The main effect of this was its contribution to the production of an escalation and it was therefore another step towards the gradual conflict deterioration which we addressed in the previous section.

As regards the crisis which started in December 2017, it is still ongoing and there is an entire range of possibilities, given that some of the short- and long-term factors are still present. Among the short-term factors, in addition to the new leadership of the Polisario Front, we should highlight the ruling of the Court of Justice of the European Union on the Fisheries Agreement between the EU and Morocco, alongside its rulings on the Agriculture Agreement.

The ruling on the Fisheries Agreement was in response to a preliminary question of validity of the 2006 Fisheries Agreement and the 2013 Protocol, as presented by a court of the United Kingdom. In essence, the Court said that the agreements could not be applied to Western Sahara because that territory is not of Moroccan sovereignty.<sup>22</sup> However, the ruling left various fronts open. The Court did not adopt a stance on the fact that fishing was taking place in Western Sahara with licences granted within the framework of the Fisheries Agreement<sup>23</sup>, nor did it mention which control mechanisms should be established to stop illegal fishing. Furthermore, a new fishery agreement is on the horizon and it will apply to Western Sahara<sup>24</sup>, following the so-called Corell doctrine, according to which the exploitation of the area's natural resources will be legitimate if it benefits and has approval from the Western Sahara people. The Polisario rejected this possibility and announced that, if the agreements were adopted, they would request their annulment before the Court of Justice of the EU.<sup>25</sup>

The long-term factors are also persistent. A solution to the conflict still has not been put forward and it seems as though there is no reaction from the international community, which must become more involved in the conflict by helping to diffuse the tension and by attempting to find a solution. At least the UN Security Council has been seen to react to the 2017 crisis, given that it asked the parties to sit down for negotiations and it reduced the deadline for the renewal of the MINURSO mandate from one year to six months.<sup>26</sup> In turn, the European Union seems to be more a part of the problem than the solution, and the Commission and Council seem to be more preoccupied with finding a formula for safeguarding the agreements for the exploitation of natural resources than with looking for a solution to the conflict. The sale of arms to the contenders does not contribute to easing the tension either. In any case, it seems that the African Union is going to become more actively involved in helping to find a solution. During the 3<sup>rd</sup> Summit of the Heads of State and Government of the African Union, held in Nuakchott from 25 June to 2 July 2018, a mechanism was approved to help resolve the

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<sup>22</sup> Judgment of the Court (Grand Chamber) of 27 February 2018, *Western Sahara Campaign UK v Commissioners for Her Majesty's Revenue and Customs and Secretary of State for Environment, Food and Rural Affairs*, case C-266/16.

<sup>23</sup> I. González García, 'Los acuerdos comunitarios de pesca con Marruecos y el problema de las aguas del Sáhara Occidental', 36 *Revista Española de Derecho Europeo* (2010) 521-564.

<sup>24</sup> Recommendation for a Council Decision to authorise the Commission to open negotiations on behalf of the European Union for the amendment of the Fisheries Partnership Agreement and conclusion of a Protocol with the Kingdom of Morocco, COM (2018) 151 final. ANNEX to the Recommendation for a Council decision to authorise the Commission to open negotiations on behalf of the European Union for the amendment of the Fisheries Partnership Agreement and the conclusion of a Protocol with the Kingdom of Morocco, (2018) 151 final ANNEX.

<sup>25</sup> "EU-Morocco agreement including Sahrawi territories: Polisario Front firmly condemns, lodges appeal to CJEU", *Sahara Press Service*, 16/07/2018.

<sup>26</sup> UNSC Res 2014 (2018), 27 April 2018.

Western Sahara Conflict. In contrast, there are no short-term changes in sight in the Maghrebi regional context.

We therefore think that all scenarios are possible. The possibility that the hostilities will restart is ever closer. Even though the months tick by and the point of no return is not reached, the tension is high in the area and any incident could provoke the worst of all the scenarios.

However, as the months pass and hostilities are not reopened, we believe it is equally (or more) possible that this crisis will not lead to an armed confrontation, even if another step is taken in the escalation and deterioration of the situation and the presence of the Polisario around Guerguerat turns into the new state of normality.

We must not overlook other scenarios, either: the crisis may lead to a *détente* or, in an ideal world, it might even lead to a reflection process which brings about a solution to the conflict. These two possibilities have been shown in the UN Secretary General's Reports of March 2018, in which he appears to be relatively optimistic regarding the future and in which he has confirmed the parties' desire for dialogue.<sup>27</sup> Recent events may confirm this optimism: on August 2018, the UN Secretary General's Special Envoy (Hans Köehler) proposed the parties and neighbour states a "preliminary round of talks". Morocco and Polisario Front accepted the proposal, and the first "round table meeting" will be held in Geneva in December 2018.<sup>28</sup>

#### (D) CONCLUDING REMARKS

Having put forth our analysis, we have reached the following conclusions:

- (1) The immediate cause of the 2016-2017 crisis was the deployment of Moroccan forces (Royal Gendarmerie and civil servants) beyond the buffer strip, thus entering what the Polisario call the "Liberated Territories." The 2017-2018 crisis, which is still not over, was directly caused by the passage of a rally through Western Sahara.
- (2) In our opinion, these events show that the Western Sahara Conflict is currently in a dynamic of deterioration and escalation. The 2016-2017 crisis, which is now over, contributed to increasing the tension in Western Sahara. The crisis which started in December 2017 is still ongoing and there is an entire range of possibilities. The tension is high and any incident could lead to the reopening of hostilities, but it is also possible that time will pass and nothing will happen. There is even a window of hope for a detente, perhaps even a reopening of the negotiation process.
- (3) This crisis has both short- and long-term causes. Highlights from among the short-term causes are MINURSO's lack of operativity in the middle of the 2016-2017 crisis; the change

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<sup>27</sup> S/2018/277, par.30.

<sup>28</sup> S/2018/889, par. 27.

in leadership of the Polisario Front, which brought about a different management of some aspects of the Western Sahara Conflict; and the ruling of the Courts of the European Union concerning the Agricultural Agreement between Morocco and the EU, due to the concerns that it generated among the Moroccan authorities. And in terms of the long-term causes, we should highlight the lack of a solution to the conflict and the United Nations' avoidance of said conflict. We must also point out the worsening situation of the Sahrawi people, both in Western Sahara and in the Tindouf refugee camps, and the delicate situation in the Maghreb as well as in the neighbouring Sahel.

- (4) In our opinion, the international community is not acting as it should. The UN has started to react but we believe its actions are insufficient, for the time being. The European Union is not contributing to improving the situation either. Nor are other relevant international stakeholders. The only party that appears to be doing something is the African Union, but it is not clear what result their initiative might have.