



The African Union policies towards the Western Sahara

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Introduction

Commonly referred to as Africa's last colony, Western Sahara remains the last Non-Self-Governing Territory in Africa on the agenda of the UN since 1963. Despite international and African settlement efforts, the conflict, which erupted in 1975 following Morocco's occupation of the Territory, remains active and there is no solution in sight. The article will analyse the policies pursued by the African Union (AU), as an intergovernmental organisation, with regard to the question of Western Sahara, as reflected in AU official documents, decisions and statements on the matter. It will start with outlining the general historical and political context of the involvement of the African continental organisation in the issue of Western Sahara, and how the Organisation of African Unity (OAU), the predecessor of the AU, had dealt with this question. It will then focus on some defining moments of the engagement of the African continental organisation with the Western Sahara issue, with special emphasis on four defining moments. First, the admission of the Sahrawi Arab Democratic Republic (SADR) to the OAU in 1984 as its significance for the treatment of the question of Western Sahara within the African context. Second, the transformation of the OAU into the AU in 2002, and the role played by the AU policy-making and legal organs regarding the question of Western Sahara. Third, the admission of Morocco to the AU in 2017 and its implications on the debates within the AU policy organs regarding the Western Sahara issue. Fourth, the establishment of the AU high-level mechanism for Western Sahara and the prospects of the AU involvement in the UN-led peace process aimed at resolving the conflict. Overall, the article will demonstrate that, despite its active involvement in the question of Western Sahara, the AU still faces certain structural and political constraints that have so far prevented it from having a major role as an active player in the management and resolution of the longest running conflict on the continent.

Historical and political context

To set the historical and political context in which the African continental organisation became involved in the question of Western Sahara, three key points should be highlighted. *First*, the creation of the OAU in 1963 coincided with the inclusion of Western Sahara—or Spanish Sahara as known then—on the UN list of Non-Self-Governing Territories under Chapter XI of the UN Charter. The list, which is still open today, included those territories whose peoples were subjected to colonial and foreign domination at the time. The legal

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and political importance of establishing Western Sahara as a Non-Self-Governing Territory consisted in recognising the people of the Territory as a colonial people with an inalienable right to self-determination in accordance with the UN General Assembly resolution 1514 (XV) of 14 December 1960 containing the *Declaration on the Granting of Independence to Colonial Countries and Peoples*. On 16 December 1965, the UN General Assembly adopted its first resolution on Spanish Sahara¹ in which it recalled resolution 1514 (XV) of 1960 and requested Spain, as the administering power of the Territory, to take all necessary measures to liberate Spanish Sahara from colonial domination.

Second, the OAU Charter, which was adopted in May 1963, included among its purposes the promotion of the unity and solidarity of the African States and eradication of all forms of colonialism from Africa.² Article 3 of the OAU Charter provides that Member States, in pursuit of the purposes stated in Article II, solemnly affirm and declare their adherence to the following principles including, *inter alia*, absolute dedication to the total emancipation of the African territories that are still dependent.³ The First Conference of Independent African Heads of State and Government, held in Addis Ababa, from 22 to 25 May 1963, adopted resolution CIAS/Plen.2/Rev.2 on decolonisation. Through the resolution, the African leaders reaffirmed the duty of all African Independent States to support dependent peoples in Africa in their struggle for freedom and independence. In 1966, the OAU Council of Ministers also adopted resolution CM/Res. 82 (VII)⁴ in which it expressed its full support for all efforts aimed at the immediate and unconditional liberation of all African territories under Spanish domination including Spanish Sahara.

Third, recognising that border problems constituted a grave and permanent factor of dissent, the OAU was unequivocal in establishing the intangibility of borders inherited from the colonial period as one of the key guiding principles of the incipient continental body. The principle was enshrined in resolution AHG/Res. 16 (I) adopted by the OAU Assembly held in Cairo, Egypt, from 17 to 21 July 1964.⁵ The resolution recognised that the borders of African States, on the day of their independence, constituted a tangible reality. The OAU Assembly consequently reaffirmed solemnly the strict respect by all Member States of the Organisation for the principles laid down in paragraph 3 of Article III of the OAU Charter.⁶ It also solemnly declared that all Member States had pledged themselves to respect the borders existing on their achievement of national independence.⁷ The same principle has also been enshrined in the Constitutive Act⁸ of the African Union.⁹ It is pertinent to note in this context that only Morocco and Somalia abstained from voting on the OAU resolution AHG/Res. 16 (I) because both countries had territorial claims over their neighbours: Morocco in the case of Western Sahara and Mauritania and Somalia in the case of parts of Ethiopia and Kenya.

The UN and the international community as a whole have significantly contributed to the enshrining of the principle of the intangibility of colonial borders in the African context. The UN in particular has recognised and admitted within its membership the African

¹ A/RES/20/2072 of 16 December 1965, paragraph 2.

² The OAU Charter adopted by the Heads of African States and Governments assembled in the City of Addis Ababa, Ethiopia, on 25th day of May 1963; article II; a and d.

³ *Ibid.*, article III: 6.

⁴ Resolution on the Territories under Spanish Domination, Resolutions of the Seventh Ordinary Session of the Council of Ministers held in Addis Ababa, Ethiopia, from 31 October to 4 November 1966.

⁵ Resolution AHG/Res. 16 (I) on Border Disputes among African States adopted by the OAU Assembly of Heads of State and Government First Ordinary Session, Cairo, UAR, from 17 to 21 July 1964.

⁶ *Ibid.*, par. 1.

⁷ *Ibid.*, par. 2.

⁸ Constitutive Act adopted by the Thirty-Sixth Ordinary Session of the Assembly of Heads of State and Government of the OAU, held in Lomé, Togo, on 11 July 2000; see Article 4, Principles: b.

⁹ The African Union was launched officially during the First Assembly of the Heads of State and Government of the African Union held in Durban Summit, South Africa, on 9-10 July 2002.

States with their borders as they existed at the time of their independence and not based on any historical, ethnic or other criteria. The International Court of Justice (ICJ) has also shown that the principle of *uti possidetis juris*, the application of which gives rise to this respect for intangibility of frontiers, is a firmly established principle of international law where decolonisation is concerned. According to the ICJ, the principle is not a special rule which pertains solely to one specific system of international law. It is a general principle, which is logically connected with the phenomenon of the obtaining of independence, wherever it occurs.¹⁰

This was the historical and political context in which the OAU became seized of the question of Western Sahara as an African territory that was under foreign domination. The principles and objectives of the OAU Charter were to guide the OAU in its policies regarding Western Sahara, in particular those principles relating to the total decolonisation of the African territories under foreign occupation. In line with these principles, the OAU consistently maintained its support for the liberation struggle of the people of Western Sahara as manifested in the many statements and resolutions adopted on the matter. These included the OAU decision to admit the Sahrawi Republic (SADR), as a full member State, to the African continental body.

The Admission of the Sahrawi Republic (SADR) to the OAU

As I pointed out elsewhere (Omar, 2008: 46), although Spain withdrew from Western Sahara in February 1976 without fulfilling its responsibilities in decolonising the Territory, it created the conditions and structures on which a national Sahrawi entity would be founded. First, Spain delimited the borders of the Territory through a series of international agreements. Second, it contributed, through its colonial policy, to the emergence of a relatively homogeneous demographic community conscious of its own distinctive self: the Sahrawi people. As Zunes and Mundy (2010: 95) have observed, Spanish colonial domination specifically and regional colonisation generally played a profound role in shaping the Western Saharan's self-conception.

It was in this context that the Frente POLISARIO¹¹, in representation of the Sahrawi people, proclaimed the Sahrawi Arab Democratic Republic (SADR) on 27 February 1976 as a sovereign State over the Territory of Western Sahara. The proclamation of the SADR was not only to fill in the vacuum left by Spain's precipitated withdrawal from the Territory but was also to embody the sovereign will and independence of the Sahrawi people. This fact was confirmed by the Advisory Opinion of the ICJ on 16 October 1975¹², which established that, prior to Spanish colonisation, Western Sahara was inhabited by autonomous and independent people who were socially and politically organised under leaders competent to represent them. Since its proclamation, the SADR has been recognised by more than 80 states; it has established diplomatic relations with many countries around the world. The SADR exercises its full sovereignty over the liberated territories of Western Sahara and has the administrative and political capacity to handle its own affairs and conduct its international relations.

The huge costs incurred during the war made King Hassan II of Morocco realise the impossibility of a military solution in Western Sahara. In an attempt to halt the advance of the Sahrawi Army and the increasing diplomatic achievements made by the SADR

¹⁰ International court of Justice, Reports of judgments, Advisory Opinions and Orders. Case concerning the frontier dispute (Burkina Faso/Republic of Mali), Judgment of 22 December 1986, par. 20.

¹¹ *Frente Popular para la Liberación de Saguía el Hamra y de Río de Oro* (Frente POLISARIO).

¹² ICJ (1975) Advisory Opinion on Western Sahara, 1975, ICJ 12, par. 81.

in Africa and elsewhere, King Hassan II was forced to contemplate, albeit for tactical reasons, the possibility of holding a self-determination referendum in Western Sahara as a way-out of the conflict. In its Eighteenth Ordinary Session held in Nairobi, Kenya, from 24 to 27 June 1981, the OAU Assembly of Heads of State and Government examined the report of the Secretary-General and the Reports of the Fifth and Sixth Sessions of the Ad-Hoc Committee of Heads of State on Western Sahara. It noted with appreciation the solemn commitment made by King Hassan II of Morocco to accept the holding of referendum in the Western Sahara to enable the people of that territory to exercise their right to self-determination as well as his pledge to cooperate with the Ad-Hoc Committee in the search for a just, peaceful and lasting solution.

The OAU Assembly consequently adopted resolution AHR/Res. 103 (XVIII) on Western Sahara in which it decided to set up an Implementation Committee with full powers to work with the UN and to take all necessary measures to guarantee the exercise by the people of Western Sahara of self-determination through a general and free referendum. It urged the parties to the conflict to observe an immediate ceasefire and directed the Implementation Committee to meet before the end of August 1981 and in collaboration with the parties in conflict to work out the modalities and all other details relevant to the implementation of the ceasefire and the conduct and administration of the referendum. It also requested the UN in conjunction with the OAU to provide a peacekeeping force to be stationed in Western Sahara to ensure peace and security during the organisation and conduct of the referendum and subsequent elections.

Despite the early commitment undertaken by King Hassan II of Morocco before the OAU Summit held in Nairobi in June 1981 and its pledge to allow the referendum to take place and to respect its outcome, it immediately became evident that Morocco was not sincere in its intentions, and that it was only playing for time. Against the backdrop of Morocco's obstructionism, on 22 February 1982, the OAU took a decision to admit the Sahrawi Republic (SADR) into the continental organisation, after having been recognised as an independent sovereign African State by more than half of Member States of the OAU.¹³ The decision was then followed by the SADR taking up its seat as the 51st Member State of the OAU in November 1984. In reaction, Morocco withdrew from the organisation.

In opposing the SADR's admission into the OAU, Morocco and its allies at the time contended expressly and implicitly that a state could not exist and be recognised as such before it had established governmental, effective control over a given population living in a clearly defined territory. However, Morocco's argument was both circular and self-serving. The SADR was not able to establish control over the whole Western Sahara and over half of its population precisely because of Morocco's forcible occupation and annexation of the Territory in defiance of the Advisory Opinion of the ICJ of 16 October 1975 and the UN and OAU resolutions on the matter.

At a later stage, Morocco argued that some States had allegedly withdrawn their recognition of the SADR, thus undermining the political and legal existence of the Sahrawi State. The argument is invalid because, in accordance with the rules of international law of recognition of States contained in article 6 of the 1933 Montevideo Convention, "recognition is unconditional and irrevocable"¹⁴. Hence, once other States have recognised the SADR as a sovereign State, then these States cannot revoke their recognition, except when the SADR ceases to exist, or when the recognising States no longer exist. Moreover, the fact that some States, due to extraordinary circumstances, had to have a part of their institutions

¹³ Admission was based on decision by simple majority of Member States in line with Article XXVIII (2) of the OAU Charter.

¹⁴ The Montevideo Convention on the Rights and Duties of States of 1933, article 6.

operating from outside their territories has never been considered as an impediment to their recognition as sovereign States. The Palestinian case has shown that the doctrine related to recognition of States has evolved to benefit the legitimate aspirations of peoples struggling against foreign occupation and colonial rule.

The OAU decision on admitting the SADR as a Member State of the OAU was therefore a crucial defining moment that had significant implications on the OAU active involvement in the question of Western Sahara. A landmark in this context was the adoption by the OAU Assembly of Heads of State and Government, meeting in its Nineteenth Ordinary Session in Addis Ababa from 6 to 12 June 1983, of resolution AHG/Res. 104 (XIX)¹⁵ on Western Sahara. The resolution reaffirmed, in letter and spirit, OAU resolution AHR/Res. 103 (XVIII) on Western Sahara, as outlined above. It urged the parties to the conflict, the Kingdom of Morocco and the Frente POLISARIO, to undertake direct negotiations with a view to bringing about a ceasefire to create the necessary condition for a peaceful and fair referendum for self-determination of the people of Western Sahara, a referendum without any administrative or military constraints, under the auspices of the OAU and the UN.¹⁶ It also requested the UN in conjunction with the OAU to provide a Peace-Keeping Force to be stationed in Western Sahara to ensure peace and security during the organisation and conduct of the referendum.¹⁷

The OAU resolution AHG/Res. 104 (XIX) was instrumental in laying the foundations for the subsequent UN efforts aimed at finding a solution to the question of Western Sahara. It was in this context that the UN General Assembly adopted unanimously resolution 40/50¹⁸, on 2 December 1985, based on a draft introduced by the Chairman of the OAU, the then President of Senegal, on behalf of the African States. Resolution 40/50, which reflected the entire operative paragraphs of OAU resolution AHG/Res. 104 (XIX), requested the two parties to start (a) direct negotiations to reach (b) a ceasefire, and (c) to agree on the modalities of a free and fair referendum on self-determination for the people of Western Sahara.

In the framework of the General Assembly resolution 40/50, the UN Secretary-General and the OAU Chairman began, in 1986, a joint mediation aimed at obtaining acceptance by the two parties to the conflict of a settlement plan. The main aim of the plan was to enable the people of Western Sahara to exercise their inalienable right to self-determination and independence under conditions acceptable to them and, hence, to the international community. The UN and OAU jointly elaborated a Settlement Plan that was agreed to by the two parties on 30 August 1988, and adopted by Security Council resolutions 658 (1990) and 690 (1991). The plan provided for holding a free and fair referendum under UN/OAU supervision in which the Sahrawi people could exercise their right to self-determination in choosing between independence and integration into Morocco. The Security Council also mandated the establishment of the United Nations Mission for the Referendum in Western Sahara (MINURSO) that was tasked with holding a referendum for self-determination at a specified date not later than February. The mission was subsequently deployed in the Territory to supervise the ceasefire, which came into force on 6 September 1991. The promised referendum however has not been held yet owing to Morocco's unwillingness to go ahead with UN/OAU Settlement Plan¹⁹ for fear that the Sahrawi voters would overwhelmingly vote

¹⁵ Resolution AHG Res 104 (XIX) on Western Sahara, Assembly of Heads of State and Government, Nineteenth Ordinary Session, 6 to 12 June 1983, Addis Ababa, Ethiopia.

¹⁶ *Ibid.*, par. 2.

¹⁷ *Ibid.*, par. 4.

¹⁸ Resolution A/RES/40/50, adopted by the General Assembly on 2 December 1985, 99th plenary meeting, Question of Western Sahara.

¹⁹ Report of the Secretary-General on the situation concerning Western Sahara, 19 February 2002, (S/2002/178), par. 48.

for the independence of Western Sahara. In the meantime, until its transformation into the AU, the OAU maintained the same policy regarding Western Sahara which was based on the principles and objectives of its Charter and its relevant resolutions on the matter.

The AU and the Question of Western Sahara

The transformation of the OAU into the AU was described as an event of great magnitude in the institutional evolution and transformation of the continent. The year 1999 however may be singled out as the first time when the OAU Assembly decided, in conformity with the ultimate objectives of the OAU, to establish an African Union as a way to expedite the process of economic and political integration of the continent. Since then, efforts were redoubled to achieve this goal that culminated in Durban Summit, South Africa, held on 9-10 July 2002, which marked the official launching of the AU and the holding of the First Assembly of the Heads of State and Government of the African Union.

In the AU founding Constitutive Act²⁰, which was adopted in Lomé, Togo, on 11 July 2000, the African leaders underlined that the AU shall function in accordance with a number of principles including, *inter alia*, sovereign equality and interdependence among Member States of the Union; respect of borders existing on achievement of independence; and prohibition of the use of force or threat to use force among Member States of the Union. The establishment of the AU, therefore, marked another important defining moment in the involvement of the African organisation in the question of Western Sahara. As the successor to the OAU, the AU has remained strongly committed to finding a solution to this question in fulfilment of its responsibilities for the promotion of peace, security and stability on the continent in accordance with the UN Charter and the AU Constitutive Act. It is pertinent to highlight in this context the AU Plan of Action²¹ that was adopted during the Special Session on the Consideration and Resolution of Conflicts in Africa held in Libya in 1999. The Plan of Action included the measures that needed to be taken to accelerate the resolution of conflict and crisis situations and consolidate peace in Africa. Regarding Western Sahara, the AU leaders pledged their support for the ongoing UN efforts to overcome the current impasse and for relevant UN Security Council resolutions. They also called for the intensification of efforts towards the holding of a referendum to enable the people of the Territory to choose between the option of independence and that of integration into the Kingdom of Morocco.

Concerned about the human rights situation in the occupied territories of Western Sahara, the AU Executive Council, meeting in its Twentieth Ordinary Session, held in Addis Ababa, from 23 to 27 January 2012, adopted decision EX.CL/Dec.689(XX) on the Twenty ninth, Thirtieth and Thirty first Activity Reports of the African Commission on Human and Peoples' Rights (ACHPR). Concerning the situation in Western Sahara, the Executive Council requested the ACHPR to carry out a mission to the Occupied Territory of the SADR with a view to investigating human rights violations and to report to the next Ordinary Session of the Executive Council in January 2013. The significance of this decision lies in that it highlighted the increasing interest given by the AU to the issue of human rights in the Occupied Territories of the SADR as well as the AU's stance with regards Morocco's occupation of parts of the SADR.

²⁰ Constitutive Act adopted by the Thirty-Sixth Ordinary Session of the Assembly of Heads of State and Government of the OAU, held in Lomé, Togo, on 11 July 2000; Article 4.

²¹ Plan of action (SP/ASSEMBLY/PS/PLAN (I)) adopted by the AU Heads of State and Government, meeting in Tripoli, Libya, on 31 August 2009.

The AU Assembly of Heads of State and Government, meeting in its Nineteenth Ordinary Session, held in Addis Ababa, on 15-16 July 2012, adopted the Report of the Peace and Security Council on its Activities and the State of Peace and Security in Africa. Regarding Western Sahara, the Assembly renewed the AU's appeal to the Security Council for a more proactive approach to the dispute. In particular, it called on the Security Council to endeavour to create conditions that would enable the people of Western Sahara to exercise their right to self-determination in line with international legality and the relevant AU decisions, including the AU Plan of Action adopted on 31 August 2009. In the same context, the AU Executive Council, meeting in its Twenty-Second Ordinary Session, held in Addis Ababa, on 21-25 January 2013, adopted decision EX.CL/Dec.758(XXII) on the Activity Report of the AU Commission. Concerning Western Sahara, the Executive Council requested the Commission to take all the necessary measures for the organisation of a referendum for self-determination of the people of Western Sahara in compliance with the relevant OAU decisions and UN resolutions.

The Peace and Security Council (PSC) is the principal, standing organ of the AU for the prevention, management and resolution of conflicts. In March 2015, the PSC took a decision²² on Western Sahara in which it reaffirmed the AU commitment to the search for a peaceful and lasting solution to the conflict in fulfilment of the AU responsibilities in the promotion of peace and security on the continent in accordance with the UN Charter. To this end, the PSC recommended practical steps including the reactivation of the Ad Hoc Committee of Heads of State and Government on Western Sahara, the establishment of an International Contact Group for Western Sahara and the regular review of the situation in the Territory. The decision urged the UN Security Council to take all necessary decisions to ensure progress in the search for a solution to the conflict in Western Sahara. It also called on the Council to provide MINURSO with a human rights mandate and to address the issue of the illegal exploitation of the Territory's natural resources.

In June 2015, the AU Assembly adopted a decision²³ in which it called on the UN General Assembly to determine a date for the holding of the self-determination referendum for the people of Western Sahara and to protect the integrity of Western Sahara as a Non-Self-Governing Territory from any act that might undermine it. It also urged the Security Council to assume fully its responsibilities and to address effectively the issues of the respect for human rights and the illegal exploitation of the natural resources of the Territory. The same position was reiterated in the AU Summit held early this year²⁴.

The Office of the Legal Counsel and Directorate for Legal Affairs of the AU Commission issued in 2015 a legal opinion²⁵ on the legality of economic activities in Western Sahara. The legal opinion reaffirmed that Western Sahara is a Non-Self-Governing Territory under Article 73 of the UN Charter. As a Non-Self-Governing Territory, Western Sahara question remains a pending issue of decolonisation and should therefore be resolved in accordance with UN General Assembly resolution 1514 (XV) of 14 December 1960 on *the Granting of Independence to Colonial Countries and Peoples*.²⁶ Moreover, the AU legal

²² Communiqué (PSC/PR/COMM/1. (CDXCVI)) adopted by Peace and Security Council, 496th Meeting, Addis Ababa, Ethiopia, 27 March 2015.

²³ Decision Assembly/AU/Dec.583(XXV), Assembly of the Union, Twenty-fifth Ordinary Session 14-15 June 2015, Johannesburg, South Africa, par. 18.

²⁴ Decision Assembly/AU/Dec.598(XXVI), Assembly of the Union, Twenty-sixth Ordinary Session 30-31 January 2016, Addis Ababa, Ethiopia, par. 20.

²⁵ Legal opinion on "the legality in the context of international law, including the relevant United Nations resolutions and OAU/AU decisions, of actions allegedly taken by the Moroccan authorities or any other state, group of states, foreign companies or any other entity in the exploration and/or exploitation of renewable and non-renewable natural resources or any other economic activity in Western Sahara" issued by the Office of the Legal Counsel and Directorate for Legal Affairs of the African Union Commission, 2015.

²⁶ *Ibid.*, par. 67.

opinion made it clear that Morocco had never acquired the status of administering Power over the Territory of Western Sahara in terms of Article 73 of the UN Charter²⁷, and that, consequently, Western Sahara/SADR is considered to be under colonial occupation by Morocco. Furthermore, the legal opinion recalled that the AU and all Member States of the UN had never recognised the sovereignty claims of Morocco over Western Sahara nor approved Morocco's occupation of Western Sahara.²⁸ Accordingly, Morocco, as the occupying Power in accordance with the UN General Assembly resolution 2711 of 1970²⁹, has no legal right under the UN Charter and international law to occupy or govern the Territory of Western Sahara.

As outlined above, the actions taken by the AU Assembly, the Executive Council and the Legal Counsel all show the different instruments and levels at which the AU has been actively involved in the question of Western Sahara in line with the guiding principles of AU Constitutive Act and AU relevant decisions on the matter.

Morocco's Admission to the AU

As indicated earlier, Morocco withdrew from the OAU in 1984 when the SADR took up its seat a Member State of the African continental body. Three years later, Morocco applied to join the then European Communities (EC) but the application was rejected. Following decades of trying to win the support of some African countries to ease its increasing isolation on the continent, Morocco eventually decided to join the AU in the hopes that its activated economic and religious diplomacy would help it redeem its image on the continent. The decision came after a continent-wide campaign initiated by Morocco in 2016 to lobby its African friends on its own behalf. This included personal visits by the King during which "major" trade deals were concluded with a number of African countries. In a letter addressed to the 27th AU summit held in Kigali, Rwanda, in July 2016, King Mohammed VI of Morocco announced his country's decision to join³⁰ the AU. On 19 September 2016, the Moroccan Foreign Minister officially wrote to the Chairperson of the AU Commission, Nkosazana Dlamini-Zuma, notifying her of the intention of the Kingdom of Morocco, an African State, to accede to the AU Constitutive Act and to be admitted as a member of the Union in line with Article 29 of the Constitutive Act. Less than two weeks ahead of the AU Summit in January 2017, the Moroccan Parliament was pressed by the King to ratify, without any reservation, the AU Constitutive Act at time when the country had no government in power.

It is pertinent to underline that, in line with Article 19 of the 1969 Vienna Convention on the Law of Treaties³¹, customary International law dictates that no reservation can be formulated on a treaty if it is incompatible with the objects and purpose of the treaty in question. In particular, Article 3 and Article 4 of the AU Constitutive Act are fundamental provisions as they set out the principles and objectives of the Union and, as such, they cannot be derogated from in any way. A state willing to accede to the AU therefore must fully comply with the letter and spirit of these provisions. In this context, Morocco's ratification of the AU Constitutive Act without any reservation implies Morocco's recognition of and commitment to the principles stipulating the respect for the existing borders and the sovereign equality of all AU Member States, including the SADR, among

²⁷ *Ibid.*, par 50.

²⁸ *Ibid.*, par. 53.

²⁹ *Ibid.*, par 72.

³⁰ Some commentators and political pundits often speak of Morocco's "return" to the AU. This is incorrect because, prior to its admission in 2017, Morocco had never been a member of the AU.

³¹ Vienna Convention on the law of treaties (with annex), concluded at Vienna on 23 May 1969.

other principles. Nonetheless, Morocco's continued occupation of parts of the SADR, a founding Member State of the AU, posed a major legal and political challenge, leading to heated debates within and outside the Union.

Amid these debates, the Assembly of the Union adopted its decision³² on the admission of the Kingdom of Morocco to the AU at its ordinary session held in Addis Ababa, Ethiopia, on 30-31 January 2017. Its decision, the AU Assembly took note of the debate on the matter and the legal opinion provided by the Legal Counsel of the AU at the request of some Member States. It welcomed the request from the Kingdom of Morocco as it would provide the opportunity to reunite the African community of states around the Pan-African core values of the Founders of solidarity, unity, freedom and equality, in accordance with the principles and objectives of the Constitutive Act. It would also strengthen the ability of the AU to find African solutions to African problems. To this end, the AU Assembly decided to admit the Kingdom of Morocco as a new AU Member State in conformity with Article 9(c) and Article 29 of the Constitutive Act.

Morocco's admission to the AU represented another defining moment because it was received with the expectation that it would contribute to finding a solution to the question of Western Sahara, thus strengthening the ability of the AU to find African solutions to African problems. In particular, it was expected that it would enable the AU to support the relaunching of the negotiation process between the SADR and Morocco, both members of the Union, with a view to reaching a durable solution consistent with the letter and spirit of the relevant OAU/AU decisions and UN resolutions. An important step in this direction was the decision taken by the AU in July 2018 to establish an African high-level mechanism for Western Sahara.

The establishment of the African High-level Mechanism for Western Sahara

In his report³³ submitted to the 31st Ordinary AU Session, held in Nouakchott, Mauritania, from 1 to 2 July 2018, the Chairperson of the AU Commission, Moussa Faki Mahamat, recalled that the Assembly had requested him to report on measures and initiatives that would have been taken on the Western Sahara issue in partnership with the UN. He highlighted as major challenges the paralysis of the integration process in the Maghreb region and the impact of the conflict on the functioning of the AU, as evidenced by the numerous incidents that occurred in the course of the activities organised as part of its programmes and in meetings with international partners. In his view, this situation was even more damaging as it occurred at a time when the AU was endeavouring to accelerate the process of continental integration. As for the contribution of the AU in this regard, the Chairperson of the AU Commission underlined that the AU's role should be aimed at accompanying and supporting the UN efforts, bearing in mind that the Security Council is seized of the matter. In line with this accompaniment and support role, it was advisable that the Assembly of the Union establish an African mechanism that would enable the AU to extend effective support to the UN led-process, based on the relevant resolutions of the Security Council.

³² Decision Assembly/AU/Dec.639 (XXVIII) on the Admission of the Kingdom of Morocco to the African Union, adopted at Twenty-eighth Ordinary Session, Addis Ababa, Ethiopia, on 30-31 January 2017.

³³ Report of the Chairperson of the Commission on the Issue of Western Sahara, Assembly of the Union, Thirty-first Ordinary Session, 1-2 July 2018, Nouakchott, Mauritania, Assembly/AU/4 (XXXI).

In its decision (Assembly/AU/Dec.693 (XXXI)) on the report of the Chairperson of the AU Commission, the AU Assembly reiterated its deep concern at the continued stalemate in the conflict in Western Sahara and the resulting consequences on the ground and in the region, as well as its impact on the functioning of the AU and the implementation of its priorities. It stressed the need for renewed efforts to overcome the current impasse in the negotiation process and to find a just, lasting and mutually acceptable political solution which will provide for the self-determination of the people of Western Sahara in line with the relevant AU decisions and UN Security Council resolutions. In this respect, the Assembly appealed to the parties to the conflict to urgently resume negotiations without preconditions and in good faith, under the auspices of the Secretary General of the United Nations whose Security Council is seized of the matter.

The AU Assembly further agreed on the need for the AU to contribute actively to the search for a solution through renewed support to the efforts led by the UN Secretary-General and his Personal Envoy. To this end, the Assembly decided to establish an African mechanism comprising the AU Troika, namely the outgoing, the current and the incoming Chairpersons, as well as the Chairperson of the Commission, to extend effective support to the UN-led efforts. This mechanism shall report regularly on the implementation of its mandate to the Assembly of the Union and, as necessary, to the Peace and Security Council at the level of the Heads of State and Government. The Assembly also decided that the issue of Western Sahara would only be raised within this framework and at this level.

The reactions of the two parties to the newly established mechanism were understandably based on their own positions as to the AU involvement in the matter in the first place. On the one hand, the SADR authorities stressed the important role that the AU should play in view of its responsibility to promote peace, security and stability across the continent in line with the AU relevant instruments and the role devolved upon regional arrangements according to the relevant provisions of the UN Charter (Chapter VIII).³⁴ The establishment of an African mechanism dedicated to the question of Western Sahara was therefore considered as a strong sign of the AU commitment to contribute substantively to the search for a peaceful, just and lasting solution to the conflict between the SADR and Morocco. The AU decision was also interpreted as a significant step given Morocco's persistent attempts to deliberately neutralise the AU's role in the peace process in Western Sahara manifested, for instance, in Morocco's unwillingness to allow the AU Observer Mission to return to the Territory and resume its collaboration with MINURSO.

On the other hand, the Moroccan authorities reaffirmed the central role of the UN in leading the peace process and considered that, by recognising the SADR, the AU had excluded itself from efforts to find a solution to the conflict. This attitude was publically expressed on 30 April 2015 by Morocco' Ambassador at the UN who described the AU involvement in the Western Sahara issue as "toxic"³⁵. In Morocco's view, therefore, the newly established African mechanism "has no mandate to intervene in the search for a political solution, nor to take steps" and that its role is limited only to "providing effective support to United Nations efforts"³⁶. In this regard, it cautioned against the risks of a parallel process while underscoring the primacy of the UN in dealing with the situation. It is to be recalled that, as the successor to the OAU, the AU has remained strongly seized of the question of Western Sahara ever since the OAU became actively engaged in

³⁴ Annex to the letter dated 6 July 2018 from the Chargé d'affaires a.i. of the Permanent Mission of Namibia to the United Nations addressed to the President of the Security Council, S/2018/673.

³⁵ "In W. Sahara, 15-o But Qs of Rights, AU, Morocco PR Answers ICP" By Matthew Russell Lee. [Consult. 15.Mar.2019] Available at: <http://www.innercitypress.com/wsahara10unfile042815.html>.

³⁶ Letter dated 3 July 2018 from the Chargé d'affaires a.i. of the Permanent Mission of Morocco to the United Nations addressed to the President of the Security Council, S/2018/663.

reactivating the peace process following the adoption of the OAU resolution AHG/Res. 104 (XIX) of 1983. The AU is therefore acting regarding Western Sahara within the framework of its responsibilities for the promotion of peace, security and stability on the continent in accordance with the UN Charter and the AU Constitutive Act, which establishes as a principle of the Union “the peaceful resolution of conflicts among Member States of the Union through such appropriate means as may be decided upon by the Assembly”³⁷. The AU also remains a full partner of the UN and guarantor of the implementation of the UN-OAU Settlement Plan of 1991, which was accepted by the two parties, the Frente POLISARIO and Morocco, and endorsed by the UN Security Council and General Assembly.

Some have observed however that the establishment of this high-level African mechanism along the lines outlined above was unprecedented, as it was the first time the AU had taken a formal decision to limit the involvement of the AU Peace and Security Council in an African crisis. Given the centrality of the PSC as a major player in every security issue on the continent, the danger of such a move is that it could set a precedent for other AU member states that disapprove of AU interventions (Christian Ani and Louw-Vaudran, 2018). However, the establishment of the AU high-level mechanism for Western Sahara was prompted by the recognition of the fact that the AU should actively involve itself in the search for a solution to this longstanding conflict whose continuation affects not only regional peace and stability but also the functioning of the AU itself.

Conclusions

Based on the above examination of the policies pursued by the AU, as an intergovernmental organisation, with regard to the question of Western Sahara as well as the defining moments of the AU involvement in this issue, I would like to highlight the following conclusions:

The policies pursued by the African continental organisation (the OAU first and subsequently the AU) regarding the question of Western Sahara have been inspired by two fundamental principles, which are enshrined in both the OAU Charter and the AU Constitutive Act. The first is the solemn commitment to the total decolonisation of the African territories under foreign occupation based on the inalienable right of colonial peoples to self-determination, and the second is the intangibility of borders existing on achievement of national independence.

As disused above, the policies of the African continental organisation concerning the question of Western Sahara have evidently evolved in tandem with the developments of this question in Africa and beyond. In particular, the UN peace process in Western Sahara has had a significant bearing on how the question has been addressed within the AU at different levels of its policy-making organs. One may also argue that the emergence of a new generation of political leaders in Africa has similarly influenced in certain ways the intensity and scope of the manner in which the question used to be addressed within the African context. Unlike the post-colonial leaders who espoused Pan-Africanism and African solidarity as overarching principles of domestic and foreign policy, most of the new African leaders tend to focus largely on domestic issues, thus limiting their involvement in an issue like the Western Sahara question, which has clear continental and international implications. The long duration of the conflict and the absence of prospects for solution

³⁷ Constitutive Act adopted by the Thirty-sixth Ordinary Session of the Assembly of Heads of State and Government of the OAU, held in Lomé, Togo, on 11 July 2000; Article 4 (e).

has also reinforced the impression of its intractability. This may lead some to argue that the energies and the limited resources of the AU should be employed to address other urgent conflict situations and humanitarian crises on the continent.

In view of the fact that the AU remains an important continental forum where the Sahrawi State, the SADR, is present as a full-fledged State that enjoys support from big powers on the continent, the AU' potential scope of action regarding this issue is not unlimited. In addition to the elements outlined above, this is due primarily to the structural and political constraints built into the AU as an inter-governmental organisation where the need for consensus are often hard to reconcile with the interests and positions of individual Member States. For this reason, the AU is still unable to play a major and active role in the management and resolution of the Western Sahara conflict, which remains one of the longstanding conflicts on the continent.

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