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THE SAHARA DISPUTE IN THE ERA OF REALISM
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THE INTERNATIONAL COMMUNITY IN SEARCH OF REALISM
RESOLUTION 1813 OF THE SECURITY COUNCIL: THE TRIUMPH OF REALISM

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On 30 April 2008, the Security Council adopted Resolution 1813 relative to the settlement of the Moroccan Sahara affair. The resolution aims at a just and lasting political solution, one that is mutually acceptable by the parties to the conflict. It is explicitly founded upon the principles of international law as well as the Charter of the United Nations. As a follow-up on the Moroccan Initiative, which has been endorsed by the great superpowers, the resolution has been the object of a large consensus as well as unanimous vote. The hard core of the resolution explicitly recognizes the serious and credible efforts of the Kingdom of Morocco, and invites the other parties over to show evidence of realism. In fact, the analysis of resolution 1813 is indissociable from the context of its negotiation, which is marked by the Moroccan proposal, such as the geo-political and juridical stakes that frame its adoption. At heart, the resolution seeks to unfreeze the situation and prepare the conditions for a sustainable peace in the region (I). Also, the force of the resolution stems above all from its realistic spirit (II).
I. THE EQUIVOCAL ATTITUDES OF STATES AND THE HISTORICAL REALISM OF THE ORGANIZATION OF THE UNITED NATIONS

Of all the conflicts that have shaken Africa, that of the Moroccan Sahara is indisputably the oldest one. Lurking behind this longevity, as it were, the lack of realism manifested by certain parties to the conflict remains the determining factor. A cursory historical reading of the conflict demonstrates this quite clearly. During the first waves of decolonization of the years 1950 and 1960, Spain unilaterally tried to grant the statute of provinces to the territories of Ifni and the Sahara, and to endow them with a government as well as an elected council representing the Sahrawi tribes. In reaction to this project, Morocco launched a diplomatic offensive in June 1962. At that time, the incapacity that both Rabat and Madrid have shown in finding a way out led straight away to a stalemate. In the 1960’s, the Mauritanian attitude evolved to the tune of the ups and down of Mauritanian internal policy. As to Algeria, the fact of the matter is that, at an initial time, it declared it had no territorial claims whatsoever. A few years after, it became the key support of the separatists of the Polisario.

Faced with the equivocal attitudes of the States of the region, as well as the growing complexity of the Sahara, the UN never sought to impose a settlement; in privileging a progressive diplomatic approach, the UN showed proof of realism. However, the General Assembly invited, in its resolution 2072 (XX) of 16 December 1965, Spain to “(...) take immediately all necessary measures for the liberation of the Territories of Ifni and Spanish Sahara from colonial domination and, to this end, to enter into negotiations on
the problems relating to sovereignty presented by these two Territories”. In inviting the parties to negotiate, the UN showed proof of realism. This tendency was on its way to continue when Spain opted for a referendum in the Sahara. The General Assembly clearly requested that the Spanish government “take immediately the necessary steps to accelerate the decolonization of Ifni and to determine with the Government of Morocco, bearing in mind the aspirations of the transfer of powers in accordance with the provisions of General Assembly resolution 1514 (XV)” (Resolution 2029 [XXI] of 20 December 1966). The subsequent evolutions only reinforced the realistic option. Legally, the Opinion rendered by the International Court of Justice (ICJ) recalls “the existence of juridical ties of allegiance between Morocco and the Western Sahara”. This explicit acknowledgement of the historical ties existing between the central power in Morocco and the local tribes of the Sahara confirms Morocco’s historical rights. Also, the Opinion of the ICJ opens the way for a multitude of interpretations of the concepts of people and self-determination. In the Sahara affair, the Court clearly establishes the distinction between population and “people”. The ICJ categorically emphasizes the fact that “a certain population did not constitute a "people" that would claim self-determination”. At the time, the realism of the judiciary organ of the Organization of the United Nations led it to distinguish the notion of “population”, which covers a socio-administrative reality, and the concept of “people” endowed with political rights. Legally, the effective absence of a people implies the inexistence of a right to self-determination. In the case of the Moroccan Sahara, as in the case of a number of other similar situations, a pure and simple

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1 ICJ, Collection, 1975, p. 33.
application of the principle of self-determination remains quite unpredictable. While affirming its attachment to the principle of self-determination, the UN, along with other regional organizations, showed to be very pragmatic as to its effective implementation. In a general manner, realism always prevails. Indeed, several international instruments specify that this principle ought in no way to damage the territorial integrity of States. Hence, any abusive interpretation of the principle is largely considered by the doctrine as an encouragement of secessionist enterprises. Paragraph 6 of the Declaration 1514 (XV) of 14 December 1960 is explicit: “Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the United Nations.” In confining the field of application of the principle exclusively to colonial situations, the UN sought to construct a more stable post-colonial situation. According to the Declaration 1514 (XV) of 15 December 1960, the right to self-determination concerns “(...) a territory which is geographically separate and is distinct ethnically and/or culturally from the country administering it”, and which stands at “(...) arbitrarily (...) in a position or status of subordination”. In the Sahara affair, the depth of historical relations with the North of Morocco, cultural and religious affinities, as well as territorial continuity, put in question the application of the principle. Taking into consideration the historical, juridical and political realities of the Sahara, resolution 3458 B (XXX) of 10 December 1975 takes note of the Madrid Accords of 14 November 1975. Throughout the Sahara conflict, the UN showed evidence of realism. And after nearly a decade of military confrontations, Morocco and the separatists of the Polisario accepted, on 30 August 1988, the peace Plan proposed by the Secretary General of the UN. Ever since the
end of hostilities, the different attempts at settlement came to nought, which threw the Sahara conflict into a long phase of hibernation. This context favored some durability to this open conflict, as well as sustained a situation of “no war and no peace”.

The Moroccan Initiative, which was launched in April 2007, came in to unfreeze one of the oldest conflicts in the continent. In qualifying as serious and credible the efforts of Morocco, the Security Council showed proof of clairvoyance and realism. In this respect, resolution 1813 clearly illustrates this.

II. RESOLUTION 1813 AND THE PERSPECTIVES OF A SUSTAINABLE PEACE

Resolution 1813 intervenes at a geopolitical context that is marked by some profound mutations both at the regional and international levels:

1. During the Cold war, the divide between East-West formed a rigid system that crippled any attempt in favor of peace. Today, the Security Council has at hand a large margin of manoeuvre that enables it to assume the principal responsibility of maintaining international peace and security. This historical opportunity is to be seized for an exit out of the conflict to be found.

2. After the end of the Cold war, the hegemonic powers largely released themselves from the conflict zones that became orphans of international rivalry between the two blocs. Certain parties to the conflict of the Sahara that used the Cold War conjuncture found themselves shorn of support on the international scene.
3. At the regional plane, the nature of the threats weighing upon peace and stability in the region radically changed. In fact, the new risks which the region has from now on to face up to take up other forms (internal conflicts, terrorism, transnational crime, migrations, etc.).

To these geopolitical factors there comes to be added the Moroccan autonomy plan which represents a true historical opportunity. Indeed, of all the options proposed, that of Rabat remains to be incontestably the most credible one. The Initiative of Morocco greatly marks the country’s will and determination to contribute to peace in the region. For Rabat, peace and the construction of a strong and stable Maghreb remain to be strategic choices. Following some wide consultations with the members of the international Community, Morocco initiated a settlement plan on the basis of a large autonomy within the framework of the sovereignty of the Kingdom. The support given to the Moroccan project by the international Community is undeniable.

In fact, the adoption of resolution 1813 would not have been possible without the support of the great powers, which considered the Moroccan project to be realistic and credible. Ever since its launch, the French ex-President, M. Jacques Chirac, qualified the Moroccan project as “constructive”. In Great Britain, the British deputies, representing as they do all the political formations in the United Kingdom, underline the fact that they have received “favourably the Moroccan Initiative to grant a large autonomy in the Sahara”, adding that this Initiative “offers the opportunity to respond to the claims of separatists, by guaranteeing to all Sahrawis, both inside and outside the territory, an important role
within the authorities and institutions of the region, all the while recognizing the sovereignty and integrity of Morocco”. Overseas, the same favorable welcome has been reserved to the new dynamic initiated by Rabat. During a meeting with a delegation of Moroccan high-ranking officials, with whom he discussed the question of Western Sahara, the Under-secretary of State for Political Affairs, Nicholas Burns, described the Moroccan Initiative as “a serious and credible proposal”, adding that the United States will encourage “discussions and create the opportunity between the parties to start direct negotiations, without any preliminary conditions”, with a view to resolving the Sahara conflict. Russia and China remain favorable to a peaceful settlement that would take into consideration the local and regional realities. Ever since the Sahara conflict started, Russian and Chinese diplomacies have adopted balanced and realistic attitudes. ² To tell the truth, the contribution of Pékin and Moscow to a political settlement of the conflict comes to nobody’s surprise. It was amidst this realism impregnated ambiance that the Security Council invited the parties to the conflict to show evidence of political will towards resolving the conflict. In one famous resolution, the Security Council congratulated Morocco for its serious and credible efforts, and then asked that the two parties “(...) enter into negotiations without preconditions in good faith, taking into account the developments of the last months (...)”. In opting for further political realism in the settlement of the Sahara

conflict, the five permanent members as well as the international Community mark the will to resolve this conflict. In such a context of realism, the adoption of resolution 1813 marks a real turning point in the history of the Sahara dispute. What is then the originality of this new resolution by the Security Council?

An analysis of the text of the resolution readily shows its realistic and consensual spirit. In fact, resolution 1813 makes reference to other more recent resolutions relative to the Sahara. In question here are resolutions 1754 (30 April 2007) and 1783 (31 October 2007), both of which mark a crystal clear rupture with the Baker Plan. In deciding to prolong the mandate of the UN Mission for the Organization of a Referendum in Western Sahara (MINURSO) up until 30 April 2009, the Security Council seeks to assume its principal responsibility of maintaining peace and security in the region. Beyond this traditional role, the Security Council has gone further still. The realism of the Security Council covers both the attitude of the parties to the conflict and the bases and principles underlying the dispute settlement. In soliciting the parties and the States of the region to fully cooperate with the UN and with one another in order to put an end to the impasse, the Security Council implicitly recognizes the direct involvement of the States of the region in the conflict. Concerning the parties to the conflict, the fact is that the text has remained silent about the representativeness of the populations of the Sahara territory. The text does not recognize the Polisario as a unique and legitimate representative of the Sahrawis.

This being the case, the realism of the Security Council also concerns the fundamentals of the settlement of the conflict. While
defending “(...) a just, lasting and mutually acceptable political solution, which will provide for the self-determination of the people of Western Sahara in the context of arrangements consistent with the principles and purposes of the Charter of the United Nations (...)”, the text of the resolution subjects the political solution to arrangements in conformity with the United Nations Charter without going as far as supporting the separatist option. Indeed, the resolution does in no way draw a parallel between the right to self-determination and the right to secession. Knowing that certain parties to the conflict could always nest their claims on the principle of self-determination in bad faith, the resolution did not seek to specify the range and signification of the notion of self-determination. In applauding Morocco for its serious and credible efforts, the resolution only takes note of the proposal presented by the Polisario to the Secretary General on 10 April 2007. This clearly translates the credibility of the Moroccan Autonomy Initiative.

Realistic and consensual as it is, resolution 1813 seeks to adapt to the evolution of the situation in the Moroccan Sahara by seeking to interpret the notion of self-determination otherwise and, by the same token, definitively bury this old conflict. Indeed, for lack of a clear and objective interpretation of the principle of self-determination, it is high time to elaborate rules that serve to put into practice the principle of self-determination at the internal plane. In this respect, the Moroccan Initiative could serve as a model insofar as it would be a question of reconciling the principle of self-determination with the strict respect for territorial integrity, all in conformity with international law.
At a time when powerful multinational corporations merge in order to meet the stakes of competitiveness within the framework of a global economy and when Nation-States integrate to meet the various challenges brought about by an instable and uncertain post Cold-War international system, some States, including Algeria, continue to unconditionally support the pseudo-State created by the Polisario in the Maghreb region.

In this respect, and in spite of the multiplication of international calls for greater realism and the privileging of a spirit of compromise in the handling of the question of the Sahara, Algeria has always blocked positive evolutions made in this direction by rigidifying and stiffening the position of the Polisario during the Manhasset negotiations.

The declaration made by the former personal Envoy of the United Nations Secretary General to the Sahara, Mr. Peter Van Walsum before the Security Council on 21 April 2008, to the effect that “the independence of the Western Sahara is not a realistic option”, confirms the radicalism characterizing the positions of Algeria and
the Polisario and brushes aside the disastrous option of a sixth Maghribi State.

The lack of realism attendant upon the creation of a new State in the Maghreb region or upon the self-determination and independence option is, in essence, the conclusion reached by the UN mediator after a thorough and profound immersion into the international, regional, and local contexts of the Sahara conflict, and after an assessment of the proposals previously formulated by the UN in its search for a solution to the dispute.

This conclusion, which is presently shared by a growing number of States, international experts, and observers, confers further credibility on the Moroccan Initiative for Negotiating an Autonomy Statute in the Sahara Region.

More generally, the lack of realism which characterizes the independence option, and by way of consequence, the creation of a new State in the Maghreb region is a logical product of a multiplicity of factors pertaining to geo-politics, geo-economy, sociology, history and law.

I. THE LACK OF POLITICAL AND STRATEGIC REALISM

The Algerian and “Polisarian” project of a new State in the Maghreb region is increasingly coming against a de facto veto founded on political and strategic arguments, related to the evolutions in the positions of regional and international actors, as well as to the risks inherent to the realization of such a project.
To start with, it is illusory to assume that Morocco might be brought even to consider the prospect of being severed from its African roots by a “C-section delivery” new State. The late King Hassan II always aptly used the tree metaphor to highlight Morocco’s deep African roots: he said “Morocco was in the likeness of a tree whose nourishing roots extend deeply into African soil and whose branches and leaves rustle in European winds.” The Africanity of Morocco is an essential component of Moroccan identity. It corresponds to one of the determining factors of international politics; namely, geography. To ignore this geopolitical fact by seeking to set up a pseudo new State which would separate Morocco from its African roots is tantamount to condemning Morocco strategically, as well as curtailing its margin of political manoeuvre. Also, such a creation would upset the balance in the region and consecrate “Pax Algeriana” because, as Mohamed Cherkaoui has pointed out, the birth of a State that is to become subservient to Algeria “is bound to destroy the balance of the region for good.” Algeria would then control the entire Sahel arch and become a dominant regional power.

While the project of a new State in the Maghreb is an expedient used by the Algerian regime to weaken Morocco and to assert its own leadership and regional influence, adherence to the Moroccanity of the Sahara is one of the “fundaments” of the national policy which is unanimously upheld by each and all within Moroccan society. Moreover, the projected creation of a new State in the region also goes counter to the evolutions in the international

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context, as well as the novel United Nations approach to the problem of the Sahara.

In fact, the post Cold-War international order is no longer marked by ideological Manichaeism, which privileged simplistic dogmatic theses and collective positioning. This explains the increasingly weakened position of the Polisario as well as that of its main supporter, Algeria, as evidenced by the growing number of States which have either withdrawn or frozen their recognition of such a virtual State as “the Sahrawi Arab Democratic Republic”.

Today, the project which now commands wide adherence is not the creation of a non-viable State in the Maghreb region, but rather the Moroccan Autonomy Project, which was formally presented to the UN on 11 April 2007. Indeed the support given by numerous countries, which represent various geo-political areas and diverse geographical zones vouches for the seriousness of the Moroccan proposal and its observance of international standards in the area of Human rights and the right to self-determination.

The American and French support of the Moroccan proposal may, in this particular context, be compared to a veto opposed by two influential permanent members of the Security Council to the projected creation of a State in the Sahara. The evolution of the Spanish position is also worth mentioning: it has evolved from conventional support given to the process of self-determination of the Sahrawi population, a process that is centred on independence, to the backing of a new UN formula premised on direct negotiations between the parties with a view to reaching a consensus-based political settlement. The new approach has in fact been outlined by

Incidentally, and as the Moroccan Autonomy Project has underscored, the Security Council has, since 2004, been calling upon: “the parties and States of the region to continue to cooperate fully with the United Nations to end the current impasse and to achieve progress towards a political solution”³.

Lastly, the emergence of a new non-viable State in the region would be a source of instability for the States of the Maghreb, given the terrorist threat and the human sufferings endured by the Sahrawi populations. More explicitly, the creation of a new dependent State in the Sahara around the Sahel zone - an area already invested by terrorist groups - carries serious risks and menace for regional and international stability. It may lead to the “Balkanization” of the States in the region by fostering the recourse of separatist movements to violence and by offering terrorist groups a new sanctuary. The adherence of the United States and of its allies to a balanced political solution to the Sahara problem goes along the lines of the stabilization of the region and the limitation of risks arising from terrorist threats. In reality, since 11 September 2001, the objective of counter-terrorism has become the main guideline of the international policy of the United States and its allies. Indeed,

³ Extract from point 1 of the text of the Moroccan Initiative for Negotiating an Autonomy Statute in the Sahara Region.
the stabilization of tension centres which are likely to feed terrorism is a component of this policy.

Concerned by terrorist threats in the new Sahel-Sahara grey zone, American officials, in the framework of their global war against terror, launched the Pan Sahel Initiative in 2002⁴, and Trans-Sahara Counter-terrorism Initiative⁵. By way of consequence, they frown on any developments apt to aggravate the instability in the region and its balkanization, through the creation of a new non-viable State.

II. ECONOMIC AND SOCIOLOGICAL UNREALISM

A State is not merely a legal entity governed by a certain number of norms, institutions, mechanisms, and procedures; it is above all a human, sociological, geopolitical, historical, and economic reality. The establishment of a State thus hinges on the existence of a nation and a people, as well as the exercise of effective sovereignty, on the political and economic planes, over a national territory. In other words, the viability of a State depends largely on its economic and sociological fundaments.

From the economic vantage point, the viability of a State is intrinsically linked to the existence of adequate material and human resources and the capacity of political power to exercise veritable sovereignty on natural resources and on the various economic activities taking place on its territory. For want of such resources

⁴ PSI, or the Pan Sahel Initiative.
⁵ TSCTI, or the Trans-Sahara Counter-terrorism Initiative.
and capacities, the State becomes a sort of “Banana Republic” whose very destiny depends on foreign powers, public and private alike.

In sum, state-building presupposes the constitution of public regulations, the organization of productive forces, and the devising of national institutional strategies apt to help it negotiate its international integration and thereby become a “developer” State.6

It goes without saying that the project of a State in the Sahara is marred by economic and structural handicaps that are endogenous and exogenous in nature. To start with, the surface area of the territory and its low demographic density underscore the endogenous economic vulnerability of the sought-after State. Moreover, the geo-economic constraints of today’s world, as symbolized by the globalization of the economy and the proliferation of regional economic blocks, do not really militate in favour of the fragmentation of existing States and the creation of non-viable entities that are incapable of governing themselves by themselves economically. It should be noted that even States which are known to be viable are now compelled to form groups in order to enhance their collective bargaining power and to balance economic power relations. The odds are bound to be all the more formidable for micro-States which can never even garner the critical mass nor can they attain the vital threshold which allows them to really exist.

6 Odile Castel, the South in Globalization: What Alternatives? (in French) in La Découverte, 2002, pp. 139-147.
The Sahara region, to be sure, comprises considerable deposits of phosphates and boasts a coastline that is rich in fish resources. But these natural resources remain far below investment inflows which Morocco makes to the region in order to make up for the accumulated delays inherited from the Spanish colonial era.

On the sociological plane, the scientific research which has been carried out recently demonstrates the integration of the Sahrawi population within the overall Moroccan population, as well as in the Moroccan socio-economic fabric. It has also established the willpower of the citizens of the North and of the South to live together.

Furthermore, as far as the Sahrawis who dwell in the vast area stretching from the Atlantic to the Red Sea are concerned, the notion of territory is a mere “abstraction”7 For this reason, it is not possible either to redraw boundaries so as to satisfy Algeria and its protégés or to question the borders of the other States in the Sahel and Sahara region on the grounds of the intangibility of frontiers, as handed down by colonialism. As Mohamed Cherkaoui notes, “nothing, indeed, distinguishes between these tribes from the other Sahrawi populations that dwell in Mauritania, Algeria, Mali, Niger, Chad, Libya, and Sudan. They all share the same culture, the same social structures, and the same lifestyles. The space is not simply an ecological region called the Sahara, but rather a civilizational area. If we really want to determine the natural, social, and cultural borders for these populations, then we would have to consider the whole area, which spans from the Atlantic Ocean up to the Red Sea,

7 Mohamed Cherkaoui, op. cit., pp. 57-62.
before redrawing the borders of these countries⁸. Along the same lines, while we may qualify the Sahara stretching from the Atlantic to the Red Sea as a civilizational area that is inhabited by nomadic tribes, it is difficult to raise these tribes to the rank of peoples or nations with claims to the status of statehood.

To tribalize a state is tantamount to reverting to the Middle Ages and questioning the very notion of “nation-state” or “the modern state”, which are the offshoots of the Enlightenment and the 24 October 1648 Westphalia Treaty. In fact, the original process underlying the formation of nation-states refers us back to the historical process witnessed by Europe towards the end of the Middle-Ages. “Statehood presupposes differentiation between the public and the private, a political emergence of the civil society, as well as a centralization and institutionalization of the political sphere. As such, the nation-state is territorialized according a geometry which transcends both the city-state and the empire, to entertain minimal political communalization, that is, a sentiment of belonging shared by all citizens who are aware of the fact that they constitute the selfsame entity”⁹.

The universal dissemination of this state model is inevitably confronted with certain peculiarities, which partly accounts for statehood crises in several regions of the Third World. By reversing the original process of state formation, where the nation as a

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⁸ Ibid., p. 57
sociological and historical reality, precedes the existence of the State as a legal and institutional frame, the genesis of the State has engendered many anomalies in Third World countries, owing to the absence of any social depth in state-building and the low national coherence of the population as a constitutive element of that State.

Lastly, a Sahrawi State without any veritable national identity or sociological profundity is doomed to disappear, because a State is assuredly much more than a simple legal or institutional construct.

III. HISTORICAL AND LEGAL UNREALISM

The project of a new State in the Maghreb region is not solely devoid of political and economic realism, sociological depth, and national substance, but it is also absolutely wanting in terms of legal fundamentals. Historically speaking, the decolonization experience shows that national claims find their sources in the pre-colonial and colonial histories of the peoples that aspired for independence. But as far as the Polisario is concerned, the movement was created only on 10 May 1973 soon after Spain had expressed its determination to organize a referendum in the Sahara. The Polisario is by no means an authentic liberation movement embodying the struggle of a people seeking emancipation, but rather an instrument serving the strategic aims of Algeria. The creation of the “Sahrawi Arab Democratic Republic” in 1976 is a manoeuvre made within this perspective.

By contrast, Morocco’s historic claims on the Sahara have been acknowledged by the International Court of Justice (ICJ), in its Advisory Opinion rendered on 16 October 1975. The Opinion
confirmed the links of allegiance plighted by the Saharawi tribes to the Sultans of Morocco. As Michel Rousset states: “the most irrefutable documents dating back to eras preceding the French and Spanish occupation of Morocco, as well as the most undeniable testimonies made by the representatives of the populations dwelling in Oued Eddahab and Sakia El-Hamra, all attest to the fact that Sahrawi tribes have kept ancestral links with various Cherifian Sultans” 10.

It transpires from the above that the history of the Sahara constitutes an integral part of the history of Morocco and that any attempt to revise such a history is doomed to fail. To underscore the richness and the value of the historic links binding the Sahara and Morocco, Mohammed Cherkaoui once wrote: “Without the Sahara the history of Morocco would be incomprehensible, and without Morocco, the Sahara would be nothing more than a desert”11.

According to international law, in order for a State to exist, it must possess three effective elements: a territory, a population, and an organized political power. In the case of “SADR”, the constitutive components are artificial, the territory is borrowed, the population is confined to camps against its will, and the political entity in power is illegitimate.

The fact that “SADR” has not been recognized by the United Nations Organization shows that there exist serious doubts about

11 Ibid., p. 3.
the legality and legitimacy of such a State. The admission of the so-called Republic within the Organization of the African Union during its 20th Summit, which was held on 12 November 1984 in Addis-Abeba, was made in stark violation of the Charter of the Organization. Article 28 of the said Charter states that for a State to be admitted it has to be “an independent and sovereign State.” In addition to being a vassal, which by way of consequence, strips it of the attribute of sovereignty, “SADR” lacks a central and essential constitutive element of any State territory. The unilateral self-proclamation of a State is no guarantee that it is an effective legal entity. Any such self-proclamation must be acknowledged and recognized by the States which make up the international Community. The absence of such recognition, above all, recognition by the UN Organization, condemns this legal fiction and compromises the chance of the emergence of a new State in the region, for want of constitutional and international legality and the absence of an independent, effective, and organized political power, that is, political and economic sovereignty over the Sahara territory and over the entire Sahrawi population.
THE MOROCCAN AUTONOMY PROJECT
FROM THE PERSPECTIVE OF THE REALIST SCHOOL: THE PRIMACY OF TERRITORIAL INTEGRITY

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ABSTRACT

The evolution of the question of Moroccan Sahara within the framework of the United Nations and the work of jurists was grounded in the in-depth transformations that State territoriality has witnessed.

The turnaround in attitude of a sizeable number of States that were not long ago in favor of the theses of self-determination in the Moroccan Sahara is explained by three key factors:

❖ The evolution of the doctrinal thought relative to the question of self-determination thanks to the works of the Realist School.
❖ The obsolete and politically destabilizing character of the self-determination-independence relative to the question of traditional territorial litigation.
The politically audacious project in connection with the territorial democracy and autonomy presented by Morocco.

Thanks to the works of the Realist School, both at the political and doctrinal levels, self-determination does not mean political autonomy materialized by independence, but rather means the right to democratic governance. It indeed points to an administrative, economic, social and political autonomy that offers to the population a large power in the area of administrative management within the framework of a unique and sole State.

At first sight, there exists no definition that joins together the works of the doctrine of the Realist School. The difference in methodological approach in determining the concept of territorial autonomy resides in the different models proposed. The definition of territorial autonomy, when it comes to the proposed and negotiated autonomy, differs from one case to another, all in function of the rapports of force as well as the political willpower of the State and that of the actors present.

According to the theoreticians of the Realist School, territorial autonomy, which is the epitome of the right to self-determination, necessitates the respect for certain sine qua non conditions. Particularly pertinent here is the question of democracy and its corollary; namely, regionalization. The works of the Realist School have started to come to fruition, and to increasingly interest the authors and politicians known for their respect for the unity of States, as well as for their esteem of democracy, freedom and respect for the different identities that take advantage of territorial autonomy.
In their application of the right to self-determination, the United Nations has constantly taken care not to undermine territorial integrity. Thus, the Declaration of the General Assembly of the United Nations of 1960 on the granting of independence to colonial countries and peoples focuses on the obligation to respect territorial integrity. International law formally prohibits secession, notably when it is claimed by a minority group within the State.

In order to favor and promote the right of minorities to self-government by way of territorial autonomy, the United Nations has adopted another approach that is grounded in the safeguard of Human rights, particularly those of minorities. The recognition of individual and cultural rights on behalf of the members of national minorities sums up well the philosophy to which international society adheres today.

The failure of the settlement plan was obvious. It rests now with the United Nations to propose yet other solutions to resolve this conflict. Territorial autonomy appears to constitute the path that responds best to this ambition. Its origin is not decolonization, but the recuperation of a despoiled territory.

In this respect, the International Crisis Group suggests that United Nations change its position towards and strategy in the Moroccan Sahara, and to explore other alternatives such as territorial autonomy, most particularly.

Despite time vicissitudes, and the hostile attitude of Algeria and its acolytes, the Kingdom of Morocco ended up by convincing the international Community of the appropriateness of its positions,
which are adapted to the philosophy and the spirit of the texts of the United Nations as well as to the political realism advocated by the Realist School. Indeed, Morocco’s attitude is a reaffirmation of the concept of territorial autonomy and an expression of self-determination.

The support given by the industrialized countries, as well as by politicians and scholars from the Realist School, materialized in the concern shown by resolution 1813 of 30 April 2008 to the Moroccan Autonomy Project. This resolution takes note of “(...) the Moroccan proposal presented on 11 April 2007 to the Secretary-General and welcoming serious and credible Moroccan efforts to move the process forward towards resolution (...)”.
CHAPTER II

THE REALIST APPROACH OF MOROCCAN DIPLOMACY
The School of Realism, which was, without a modicum of doubt, one of the earliest trends of thought in the sphere of international relations, came to be demarcated through renowned thinkers and theoreticians, of whom there are Nicolas Machiavelli, Emer de Vattel and Jean-Jacques Rousseau, *inter alia*, only to form since the 15th century a unanimously recognized Reference on matters of international relations.

This School was notably famous in 1945 for the works of the American Hans Morgenthau, the proponent of the “politics among nations” theory, and later with the American diplomat Henry Kissinger; or the French thinker Raymond Aron.

The State, a key actor in international relations, ought, in accordance with the principles of the School of Realism, guarantee
its survival, the major *raison d’être* of nations, through the possession of greater powers. These powers ensue from the reinforcement of national capacities, as well as from the consolidation of alliances established with the other States.

In view of this, foreign policy becomes a mechanism of control and regulation destined to closely follow up on the different mutations of the external environment wherein the State evolves. It has, out of concern for efficiency, to make use of means that “*make the object of national consensus*”, to use the terms of Stanley Hoffmann¹, with a view to perpetuating the factors favorable thereto, and to face up to the multiple sources of destabilization.

Indeed, Moroccan foreign policy has for several centuries now been inspired by the “realist” principles, a choice that gave birth to a practical, utilitarian and pragmatic policy which has allowed Morocco to achieve its independence, to enjoy a position on the international scene, one that is worthy of its secular history, and to preserve its regional stability.

This policy has had undeniable positive effects on the central power, as well as on the Monarchy. The diplomatic efforts deployed by the Kingdom have, in fact, reinforced on both the internal and international planes, the image of the King, the direct responsible for the appointment of diplomats as well as the senior functionaries

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¹ Abd Ennabi Sabri, *“La politique étrangère marocaine entre la continuité et le changement**, Etudes et Faits Constitutionnels, n° 2, 2000, p. 20 (a journal in Arabic).
in foreign Affairs, as well as putting in place adequate structures for decision-making and great orientations.

I. MOROCCAN FOREIGN POLICY IN THE FACE OF COLONIAL INTERFERENCE

The Kingdom of Morocco, in view of its geographical openness and its historical richness, marked its presence on the international scene, a position that came to be consolidated despite the fact that the country has often provoked the covetousness of the colonial forces.

Before the 19th century, the Kingdom came to be hoisted up to the ranks of the great nations. The Industrial Revolution; however, changed the situation by affirming the supremacy of the European forces at the military plane, following the invention of new arms of destruction.

At the dawn of the 19th century, Moroccan foreign policy was tainted by certain nostalgia for the glories of the past. A testimony here is the Battle of Isly, led in 1844 in order to come to the succor of the Algerians, which perfectly illustrates the “image of the savior” that Morocco has sought to preserve for centuries.

In the public relations of Morocco with foreign States, Algeria has in fact always been a central axis in view of the geographical proximity as well as the ethnic affinities that exist between the two countries.
The Moroccan stances towards the French military intervention in Algeria also bear witness to the importance of this axis in Moroccan foreign policy. Several messages by Sultan Abderrahman Ben Hicham reveal that the latter would exhort his Qaïds to receive the Algerian populations that flee the combats; nay, to lavish on them the necessary assistance, as well as gratify them with donations. The Sultan equally brought his support to the Algerian “fighters” by providing them with arms, which earned them many a victory against the French army.

Moroccan foreign policy then centered to great degree around a mixture of vigilance and prudence vis-à-vis the neighboring Europeans, so-called enemies, infidels or still men of no word.

In the face of such opponents, the Sultan was very demanding regarding the appointment of the Walis, the Qaïds and port officials who had, according to him, to have an in-depth knowledge of foreign affairs, and to show evidence of a great deal of attention and steadfastness.

His policy on the fight against foreign interference was founded upon a religious discourse, reinforced as it was by the Walis and Qaïds in their speeches, as well as by preachers in mosques. The Sultan also relied for support on the tribes bordering enclosed territories in order to ward off any eventual attack by the French army from either the sea or from Algerian soil.

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The circumstances following the Battle of Isly coerced the Kingdom into accepting the conditions imposed by France through the Lalla Maghnia Treaty in 1845. However, another Sultan; namely, Sidi Mohamed ben Abdellah, would attempt, after his accession to the throne, in a despairing gesture, to make it up with the previous strategy by declaring war against the long-time enemy Spain. It was a war that resulted in the defeat of Tétouan and the payment of a “ransom” in return for the recuperation of the city. Ever since then, this strategy has almost officially been banned, and the Kingdom borrowed a more secular pathway in its management of foreign affairs.

Far from amply enjoying sovereignty over its own territory and inside its historical borders, and prey to the European hegemonic willpower, Morocco is more than ever targeted by the imperial great powers. France, Spain, Germany and England progressively worked their way into Morocco through intermediaries that have sealed off the financial dependency of the country vis-à-vis these States. The burden of foreign debt thus forced Morocco to make further concessions, more particularly to France and Germany during the Conference of Algeciras in 1906, and to exert but a formal sovereignty over its own territory.

Despite these constraining conditions, the Moroccan officials limited to the maximum diplomatic contacts with the European powers; while the latter chose to appoint permanent ambassadors to the Kingdom, the Moroccan central power rested content with sending emissaries within the framework of very restricted missions in Europe. It therefore established a “premeditated” isolation on the diplomatic plane, an approach that was to be reinforced in an
attempt to keep the imperial powers at bay, through the choice of the city of Tangier to shelter all the foreign embassies and diplomatic missions. This way, the city of the Detroit became the diplomatic capital of the Kingdom.

At the dawn of the 20th century, weakened as it was by debts as well as the hegemonic maneuvers of the colonial States, and suffering from a chaotic internal situation, Morocco unwillingly accepted the French Protectorate. With an imposing military presence in the Kingdom, France extends its supremacy over the centre of the country. The South and the North are controlled by Spain, whereas the city of Tangier would benefit from an “international status”.

Save for this state of split-up, Morocco raised the question of independence, either directly or indirectly, during the great international forums, notably on the occasion of the signature of the Versailles Treaty in 1919, during the meetings of the Allied forces in Casablanca in 1942, as well as during the meetings of the Security Council that were held as of the year 1945.

**II. MOROCCAN DIPLOMACY AND THE COMPLETION OF THE TERRITORIAL INTEGRITY OF THE KINGDOM**

Thanks to armed resistance, but also to the willpower, the audacity as well as the abnegation of all Moroccans, the Kingdom was able to regain its independence. It recuperated the region that was under the French Protectorate and later Tarfaya and Sidi Ifni, formerly under Spanish occupation. In parallel, Morocco did not leave in suspense the plight of the other territories and enclaves that were
still under occupation. It time and again called for their liberation, at
the level of national discourse as well as during international
forums.

At the diplomatic plane, the Kingdom also deployed consistent
efforts with a view to setting the unity of the Maghreb in place. A
testimony of this is the recognition by Mauritania during the Islamic
Summit organized in Rabat, the Tlemcen Accords, which put an end
to the border disputes between Algeria and Morocco, the Moroccan-
Algerian partnership for the exploitation of the Jbilat mines situated
in the Moroccan territory, as well as the Summit of Nouadhibou in
1970, which reunited the Heads of State of Morocco, Algeria and
Mauritania.

All these acts of diplomatic rapprochement led one to believe in the
existence of a consensus between the Maghrebi States within the
perspective of the unity in question. However, Spain, which
expressed in July 1974 its willpower to guarantee autonomy to the
Sahrawi provinces, as a first step towards self-determination,
decreed the organization of a Referendum in these provinces under
the auspices of the United Nations during the first half of the year
1975, a project that Morocco countered through a UN resolution
requesting the Advisory Opinion of the International Court of
Justice (ICJ) regarding the legality of the Spanish presence in the
Sahara region. It was a maneuver that aimed at isolating Spain on
the international political scene, and that was endorsed by the
Advisory Opinion rendered on 16 October 1975 by the ICJ.

Upon closer examination, it appears that this Opinion attempted,
more than anything else, to satisfy the parties to the conflict.
Mauritania considered it as an establishment of its position as an integral part in the settlement of the question of the Sahara, which was to be beneficial to it during the signature of the Madrid Accords. Algeria saw therein the recognition of its position, affirming that it is a case of occupation, not of the completion of the territorial integrity of Morocco. The Cherifian Kingdom, in turn, considered that the ICJ, by referring to the “ties of allegiance” existing between Morocco and the Sahrawi tribes before it could render its Advisory Opinion, came to corroborate the historical rights of Morocco to its sovereignty over the Sahara region.

And in order to consolidate its strategy, which aims at recuperating the Sahara and forcing Spain to evacuate the occupied territories, the late Hassan II announced the organization of the Green March, an initiative that caused the artificial barriers set by Spain to crumble on 6 November 1975.

Pursuant to this Accord, Spain withdrew from the Western Sahara, leaving the administration of the region in the hands of Morocco and Mauritania. Excluded as it was, Algeria did not cover up its discontent, as it pursued, each time claiming its “neutrality”, its support for the Polisario Front. Indeed, the Polisario Front was to gradually become a means of pressure in the hands of Algeria, which, through its rhetoric on the right to self-determination, continued its efforts towards erecting itself as an inevitable actor in the settlement of the Sahara dispute.

In order to face up to the notable Moroccan military presence in the Sahara region, to its administration by the Moroccan authorities, as
well as the great development projects that were launched therein, Algerian diplomacy focused its attention on two essential axes.

Firstly, it sought to prolong the state of tension in order to lead the international Community to revisit its positions vis-à-vis the conflict, to recognize the presumed Sahrawi Arab Democratic Republic (SADR), which was proclaimed in February 1976, and to favor the application of the right to self-determination.

The second axis targeted the weak link in the conflict; namely, Mauritania, which was the target of many an attack led by the Polisario Front, the purpose being to exert pressure on the authorities of Nouakchott, and to lead them to change their policy. Such a strategy resulted on 10 July 1976 in a military coup d’Etat that was staged by Colonel Moustapha Ould Salek. A few years after, on 5 August 1979 more precisely, Mauritania was constrained to sign a peace agreement with the Polisario, one that obliged it to withdraw from the Sahara without the least benefit.

In order to fill the gaps left by the withdrawal of Mauritania, which also affected the equilibrium put in place by the Madrid Accords, Morocco recuperated the zone abandoned by Nouakchott and reinforced its military arsenal, all in accordance with its historical rights and international legality. In addition to the erection of the Sand Wall, Morocco put in place some new mobile patrols in the border region, and strengthened surveillance over the separatist movements, a security measure that was to be certainly beneficial to the overall security of the Moroccan territory, but that hardly changed the offensive attitude manifested by Algerian diplomacy. The latter, thanks to its edge over Moroccan diplomacy, will impose
its vision of things on the international scene, with as a principal argument the thesis of decolonization through a referendum of self-determination.

In order to provide for the Algerian diplomatic edge, and to face up to the isolation of Morocco on the African continent, the late Hassan II accepted, during the Summit of the Organization of African Unity (OAU), which was organized in Nairobi between 24 and 27 June 1981, to hold a referendum in the Sahara region, a decision that was going to go into the right direction had Algeria not compromised it by demanding the holding of direct negotiations between Morocco and the Polisario Front so as to set the conditions of this referendum and, by the same token, establish the presumed republic as a full-fledged member of the OAU, an aspiration that was given support by the then Secretary General of the African Organization, the Togolese Adem Kodjo. The latter, not hiding his support for the Algerian thesis, accepted the adhesion of the Polisario to the OAU in conformity with the ordinary procedure for adhesion, contrary to the wish expressed by Morocco to implement article 27 of the Addis Ababa Declaration with a view to coming to a definitive decision on this question. The article in question recommends, for the purposes of settling controversial issues, recourse to two-third majority in lieu of absolute majority.

Whatever the case, the Moroccan request was not to change the course of events, since the decision to accept the Polisario Front as a member of the OAU had been definitively sealed off during the 20th African Summit held in Addis Ababa from 12 to 15 November 1984, a “violation” that led Morocco to withdraw from the African
Organization, and to transfer the Sahara dossier over to the United Nations.

The treatment of the question of the Sahara by the United Nations came up at a time when the international Order was witnessing several mutations as a result of the Soviet policy of the Perestroika. This policy allowed the international Community to settle several international conflicts through the strategy of mediation.

As regards the question of the Sahara, the fact is that the first UN mediation began with the Secretary General of the United Nations Javier Pérez de Cuellar in Mars 1986, with the participation of a representative of the OAU. After several contacts between the different parties, Morocco and the Polisario accepted, in August 1988, the proposals made by the Secretary General, proposals that were to be adopted by the Security Council in September of the same year.

The principal proposal formulated by the UN authority remains to be the organization of a referendum in the Sahara region, an option that will later run up against a sizeable obstacle; namely, the identification of the electoral body.

After the election of Kofi Annan at the Head of the United Nations, a new special Envoy for the Sahara region was appointed. It is the American James Baker, to whom three principal missions were assigned. In addition to the degree of applicability of the peace plan and the proposal of new solutions susceptible to remedying to the problematic of identifying the electoral body, the special Envoy was
tasked with proposing other alternatives in case the current process was to run into a deadlock.

Immediately following his nomination, James Baker convened the different parties to several rounds of negotiation, in Lisbon then in London, which were to result in the signature of the Huston Accords. Concerning the negotiations over technical questions, the fact is that these led into an “ethical Code” during the electoral period, as well as to the proclamation of the authority of the United Nations during the period of transition. The different parties also agreed on a set of measures to be taken with a view to re-launching the process of identification. And despite the visit by the Secretary General in the region in order to bring the parties to the conflict close together, the Accord in question, which a priori aimed at holding a referendum within a time-limit of no more than one year, came up against the obstacles set by the enemies of Morocco, obstacles that are in the main relative to the question of identifying the Sahrawi electorate.

After the accession to the throne by King Mohammed VI, the treatment of the question of the Sahara by Morocco underwent a neat change, without in fact marking any rupture with the preceding policies. Morocco has thus reorganized the Royal Advisory Council for Saharan Affairs (CORCAS), whose ultimate objective is the integration of the provinces of the South through dialogue, as well as the consolidation of the democratic process.
III. THE MOROCCAN AUTONOMY INITIATIVE, A SYMBIOSIS BETWEEN POLITICAL REALISM AND INTERNATIONAL LEGALITY

After the collapse of the Communist bloc and the rise in power of liberal ideology, the world witnessed some profound changes that established détente and reconciliation as two principal fundaments for the settlements of international crises.

The Kingdom of Morocco actively partook in this dynamic of democratic and liberal change through the establishment of democratic institutions, as well as the adoption of the principles of good governance and the respect for Human rights. The approach adopted by the Kingdom, crowned as it was on the political plane by the experience of Alternation, helped improve the image of the country on the international scene, and to gain the confidence of several influential States such as the United States and France.

In contrast, Algeria, following the failure of its democratic process at the beginning of the 1990’s, dived into quite a difficult socio-economic and political crisis, which negatively impacted its performance at the diplomatic scale. As to the Polisario Front, the situation was nothing short of catastrophic, notably because of the deterioration of the living conditions of the sequestered in the camps of Tindouf, the return of hundreds of them to the motherland, as well as the rise in the number of States to have withdrawn their recognition of the presumed SADR.

In order to make the most out of these favorable circumstances, Morocco proposed an Initiative for autonomy in the provinces of
the South, a project that takes note of the observation made by the United Nations, according to which the organization of a referendum of self-determination is an “unrealizable” option. In addition, the discord existing between Morocco and the Polisario Front over extending the electorate mass made any recourse to a consensual alternative quite indispensable.

In this context, Morocco adopted then an Initiative that perfectly responds to the recommendations formulated by the General Secretaries of the United Nations and the Security Council. It is a Project of autonomy that, while recognizing the UN authority, affirms the right of the Sahrawi populations to self-determination.

On the basis of the principle of “no winner, no loser,” this new alternative equally translates the concern that Morocco has for abiding by an international tendency which advocates a national Unity that is founded upon the principles of federalism and autonomy, the objective being to settle the conflicts running through multi-ethnic or multi-linguistic countries, such as Spain or Canada, for example.

The Moroccan Initiative equally respects the international standards of autonomy in force in several Western democratic States. In fact, while it allows the populations of the provinces of the South to enjoy their full political, economic, social and cultural rights, the Moroccan Project also confers upon these provinces the possibility of actively participating in the running of their own local affairs, a participation that indeed goes through a local Parliament where Sahrawi women as well as the different tribes of the region will be represented. The Moroccan Autonomy Project also provides for a
judiciary system and a local government that are presided by a First Minister, while the questions of sovereignty, of defense and of foreign affairs will directly proceed from the central power in Rabat.

Another specificity of the Autonomy Project is connected with the new official approach that has been adopted to bring the Project to fruition; namely, a participative approach that involves all the participants, including CORCAS, political parties, as well as civil society.

At the international plane, Morocco tried, through diplomatic means, to make its proper vision of peace known, notably by dispatching emissaries as well as handing Royal letters over to different capitals as well as Arab and Western Heads of State. This diplomatic campaign demonstrated that the Moroccan Initiative is, besides being in conformity with international legality, an alternative that certainly seeks to preserve the sovereignty and territorial integrity of the Kingdom, but which also proposes a political settlement capable of resolving the Sahara conflict in a definitive manner, a democratic solution based on the involvement of the population in local governance, establishing thereby the firm and sincere willpower on the part of Morocco to lead the process of negotiations to positive results. Among the other objectives of this diplomatic campaign, one can find the mobilization of the international Community in favor of the Moroccan Project, a fact which resulted in the latter receiving the favorable feedback of many a State.

At the regional level, the Moroccan autonomy Initiative is perfectly in tune with the efforts deployed by the State-controlled as well as
non State-controlled organisms in the countries of the Maghreb at all levels - political, economic and cultural - with a view to reviving the project of the “Arab Maghreb Union”. Such is an ambition that falls within the logic of force gathering as well as the eradication of borders, which prevails on the international scene, particularly in Europe, and which necessarily goes through the settlement of the Sahara conflict.

The other parties to the conflict; namely, Algeria and the Polisario Front, do not unfortunately share the same strategic vision expressed by Morocco. A testimony of this is their attitude during the deliberations of the Security Council to adopt a resolution concerning the Moroccan Autonomy Project. At that time, Algeria and the Polisario led a relentless diplomatic and media campaign of disinformation, their objective being to discredit the Moroccan Initiative vis-à-vis international public opinion and, by the same token, impact the course of debates within the Security Council, in addition to making it such as no single positive mention be made in favor of the Moroccan Project and; therefore, against holding a referendum of self-determination as the Polisario would wish. Except for these attempts at disinformation, the Security Council nearly failed to make any reference to the Plan proposed by the Polisario in its resolution project, a deception that did not make Morocco’s opponents give in, as they started, following the unanimous adoption of resolution 1754, to interpret the content of the resolution in their own way; they had considered that this resolution only affirmed the right of the Sahrawi people to self-determination, a right that Morocco explicitly recognizes in its Autonomy Project. Worse still, the Polisario Front advanced yet another interpretation, one that affirms that the recognition of the
right to self-determination suggests the necessity to take recourse to a referendum that includes the separatist option, a “reformulation” of the text of the resolution which foretokens, according to the Polisario, “a triumph” of its recommendations, but which nowhere mentions what is effectively indicated in the text of the resolution; namely, the “serious and credible” efforts “deployed by Morocco” in order to find a solution to the conflict.

CONCLUSION

The satisfaction expressed by the international Community, as well as international public opinion, regarding the Moroccan autonomy Initiative is nothing short of the fruit of the consistent diplomatic effort, the realism as well as the moderation characterizing Moroccan foreign policy, a realism that manifests itself in the fact that, even on its proper territory, Morocco is always ready to accept any resolution plan that respects its territorial integrity, the possibility of widening the scope of competences accorded to the Sahrawi populations within the framework of an autonomy plan not being discarded in this respect. As to moderation, the fact is that it emanates from the respect for international legality characterizing the Moroccan autonomy Initiative, an Initiative that drew inspiration essentially from the proposals made within the United Nations for the settlement of the conflict, notably the framework-agreement (or the third option) that was accepted by Morocco, but rejected by Algeria and the Polisario Front.
THE CONSTANTS OF MOROCCAN DIPLOMACY AND THE SAHARA AFFAIR: THE CASE OF THE MOROCCAN AUTONOMY PROJECT

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For several decades, the Sahara question has constituted a priority for Morocco. It is generally deemed by Moroccan decision-makers to be a leading and determining factor as far as foreign policy is concerned. Having become a major stake in foreign policy, it has often influenced the country’s choices in terms of diplomatic orientations. Such keen interest in the Sahara affair is doubtless indicative of the importance that the completion of territorial integrity has come to assume.

An analysis of the constants of Moroccan diplomacy in relation to the Sahara question can only be made by means of a reading of the ways in which the country has managed the conflict, at the regional and international levels. Accordingly, from the time the Green March was launched in 1975 up to the presentation of the Autonomy Plan in 2007, several guidelines have been instituted. And as such they constitute a basis for a study of the overarching characteristics of Moroccan diplomacy.
I. AN ANALYSIS OF THE CONSTANTS OF CONTEMPORARY MOROCCAN DIPLOMACY

Researchers interested in the history of Moroccan diplomacy agree that it derives its main characteristics from the diplomatic practices of the various dynasties which have successively reigned in Morocco. It has also acquired new aspects as a result of the developments which have taken place in contemporary international diplomacy.

A. THE AUTHENTICITY OF MOROCCAN DIPLOMACY

Morocco is one of the countries which have been able to preserve themselves as full-fledged State entities in spite of the adverse impacts of the colonial era and the territorial partition resulting therefore. Thus, during the de-colonization period, the world scene witnessed the emergence of a number of countries and the appearance of a multitude of satellite States. By contrast, the continuity of the Moroccan State is attributable to the unity characterizing its people, the wealth of its cultural and civilizational heritage which is deeply rooted in history, and political stability which has been shored up by various dynasties. Throughout the country’s history, these dynasties have developed specific political and diplomatic practices. Accordingly, and on the basis of the numerous references to history made by the three Monarchs since independence, it becomes clear that historical practice constitutes an essential fundament in contemporary Moroccan diplomacy.
Moreover, diplomatic practice in Morocco is very rich both in terms of theoretical rules and practices. In fact, one of the principal characteristics of Moroccan political and social policy is its tendency towards, and privileging of, moderation and reconciliation, combined with the rejection of extremism and rupture. This specificity in the management of domestic policy has impacted the country’s diplomatic practices in its foreign relations.

In addition to the historical and cultural factors, the geographical position of Morocco has contributed in no little part to the determination of its foreign policy. The late Hassan II used to say in this connection that “Morocco was in the likeness of a tree whose nourishing roots extend deeply into African soil and whose branches and leaves rustle in European winds”\(^\text{14}\). Clearly, for the late King, the geography of a country actually dictates its policy. Indeed, Morocco has always followed and upheld a policy of openness onto several spaces. A policy that is based on cooperation and good neighbourly terms and fostered by the conclusion of peace and friendship treaties.

**B. THE MAIN CHARACTERISTICS OF MOROCCAN DIPLOMACY**

Thanks to a neutral and moderate foreign policy, Morocco has been able to play a central role at the international plane, notably at the level of the Arab-Islamic world. Morocco has undertaken several missions of mediation because it has always benefited from the trust of various protagonists on the international scene, including

religious powers, at the helms of which stands the Pope, the leader of the Roman Catholic Church. This moderate diplomacy has been accompanied by a measure of flexibility in terms of taking up stands on major international questions. All of this has enabled Morocco to benefit from a comfortable room of manoeuvre even in critical moments in history. This was, for instance, the case during the Cold War when the interests of major regional and international powers overlapped.

The creation of concord between different actors constitutes one of the principal bases of the traditional social and cultural policy in Morocco. This has influenced Morocco’s foreign policy, of course. To this end, the Kingdom has always striven to reconcile between various contending parties wherewith it maintained close relations. By way of an example, during the reign of the late King Hassan II, Morocco actively participated in the search for a solution to the Yemenite crisis in 1967, within the framework of what was then called “the Tripartite Commission”. This commission was composed of Iraq, as a representative of Egypt, Morocco, as a representative of Saudi Arabia, and Sudan as a referee. It likewise played the role of a mediator between the United States and Egypt during the 1969 crisis, with a view to getting Egypt to recognize American debts which it had frozen in the wake of the 1967 war and to accepting the initiative of William P. Rogers, Richard Nixon’s State Secretary, in what came to be known as the “Roger’s Plan”.

Ever since his Enthronement, His Majesty, King Mohammed VI, has kept up the same mediation and reconciliation policy. A case in point: the initiative taken to resolve the Senegalese-Mauritanian
Crisis which started in 2000 when Senegalese President Abdoulaye Wade launched a vast plan designed to irrigate the fossils valley, harnessing the waters of the Senegal River, an act that was not appreciated by Mauritanian officials. The Moroccan Initiative was enhanced further by a visit made by the Sovereign to the two countries concerned and the launch of a common project: the building of a trans-Saharan road connecting Casablanca and Dakar, by way of Nouakchott in Mauritania. In another initiative, Morocco managed to bring together the Presidents of Guinea, Liberia, and Sierra Leone in a Summit organized in Rabat on February 27th 2002. The meeting laid the basis of a peace compromise among the three countries which had been in disagreement respecting some regional issues.

It should be noted that throughout the Cold War, Morocco observed a high degree of neutrality vis-à-vis the two superpowers, in spite of the existence of multiple common cultural and political points which brought it ever so near the Western block. As far as the late Mohammed V was concerned, “Non-alignment” was an indispensable condition for a small State like Morocco, inasmuch as it would allow it to play a role on the international scene, while earning the respect of major powers. This vision was adopted by the late Hassan II who deemed that, in their foreign policy, Moroccans ought to stay aloof from the problems which did not concern them geographically or culturally and that they should always endeavour to establish relations premised on friendship and neighbourly values. However, if these problems should hinge on a question of beliefs or principles to which Morocco was strongly attached, then
Morocco would be obligated to align itself with one particular block.\textsuperscript{15}

Such a perception of Non-alignment is known in International Relations as “Active Neutralism”. The late Hassan II said in this connection that the principle of non-alignment should by no means be taken to mean lack of interest in a part of humanity, but rather the acceptance of all that which was just and fair. What is intended here is dynamic non-alignment which aims at preserving human values as well as fostering peace and the advancement of mankind, at large.\textsuperscript{16} Such “neutralism” was re-asserted by the late King during the speech he delivered during the Summit of Non-aligned Countries, which was organized in Belgrade on September 6\textsuperscript{th} 1961, when he declared that non-alignment did not necessarily mean the negation of the ideas of either block, the communist or the liberal, which may at times prove constructive, nor a systematic search for a third solution, but rather choices made on the basis of permanent objectivity, which is inspired by universal conscience.\textsuperscript{17}

In the same vein, Morocco, henceforth, under the reign of His Majesty King Mohammed VI, never ceases to underscore the importance of Non-alignment. Thus, during his speech at the Summit of non-aligned nations, which was held in Havana on 15 September 2006, He states that “(...) the spirit of Bandung and its

\textsuperscript{15} The Speeches of King Hassan II, delivered between March 1977 and March 1978, pp. 56-57 (a document in Arabic).

\textsuperscript{16} Abdelouahed Benmansour, « Hassan II, His Life and Achievements, » Vol. I, 284 pages (Document in Arabic).

underlying values and ideals of peace, moderation, positive neutrality, friendship and solidarity, still constitute a suitable, effective base for tackling global challenges and building the best relations between nations”.

In addition to the aforementioned orientations, the principle of non-interference constitutes yet another major characteristic of modern Moroccan diplomacy. This entails non-interference in the affairs of third countries, on the one hand, and a refusal of any foreign interference with its own affairs. The approach adopted by the Kingdom finds its origins in the country’s observance of international and regional conventions which underline the necessity of respecting the sovereignty of other countries and avoiding any interference with their internal affairs. An example that illustrates this choice is Morocco’s non-interference with Algeria’s domestic affairs and its adamant refusal to generate or fuel the troubles and crises that already grip it, even though a number of internal instability factors might well promote such a course of action.18 Morocco opted for non-interference even though Algeria has provided permanent support to the separatist group, the Polisario.

During the reign of His Majesty King Mohammed VI, Moroccan diplomacy has remained faithful to the major principles governing its actions. To this end, the Sovereign defined the main guidelines of Moroccan diplomacy in the message addressed to the participants

18 René-Jean Dupuy, « Le respect des engagements internationaux » (or, Observance of International Commitments), in Revue de la Politique Internationale (A Special File on the Kingdom of Morocco), a Special Series, pp. 57-65.
in a Colloquium organized in Rabat on April 28, 2000, on the occasion of the celebration of the National Day of Moroccan Diplomacy. In his message he stated: “(…) We really would like our diplomacy to remain deeply attached to its specific traits: moderation and realism, without ever failing to show moderation or making compromises on matters of principles. It should strive to remain flexible but without ever losing sight of the sought-after objectives which reside in abiding by international law and legality, without ever tiring of claiming justice, equity, and recourse to dialogue, as the best way to settle conflicts, or hesitating to denounce sham dialogues (…)”. This extract from the Royal Speech comprises some of the main guidelines underlying the current diplomatic posture of Morocco.

II. THE PERMANENT TRAITS OF MOROCCAN DIPLOMACY IN LIGHT OF THE MOROCCAN AUTONOMY PROJECT

Even with the developments that have taken place in the Sahara question, Morocco has vowed to continue to abide by the main constants of its diplomacy. Indeed, the Moroccan autonomy Initiative is an illustration of such commitments inasmuch as it evinces:

- Respect for international legality.
- Realism.
- And culture of compromise.
A. THE RESPECT FOR INTERNATIONAL LEGALITY

One of the main objectives sought by States is to see to it that their foreign behaviour is in conformity with international legality, which has become one of the main bases of the New World Order. To be sure, there exists some political and doctrinal disagreement on the concept of international legality, which is often viewed as an instrument whereby the interests of the great powers, notably the five permanent members of the Security Council, are preserved. Nevertheless, international legality remains an essential mechanism for the preservation of international peace and security. It should be stated, however, that the two concepts; namely, legality and equity, are not always in tandem. This actually accounts for the cutting criticisms levelled at the international legal frame of reference which finds its source in the Security Council. In this respect, a group of specialists in international law, along with some countries of the South, have always called for the reformation of the UN system, pressing notably for the widening of the scope of permanent representation within the Security Council. The resolution of international conflicts, however, is not often achieved through respect for international legality which often clashes with State sovereignty. As a result, power relations have wielded more influence than international law.

Such a perception of international reality has been taken into account by Moroccan decision-makers in foreign policy ever since the advent of the question of the Sahara. In fact, the Kingdom steadily aspires to consolidate its diplomatic and logistical position, while observing international legality. With regards to the question of the Sahara, it has always abided by international resolutions,
even if they have not always proved equitable regarding Morocco’s inalienable right to recover its Southern provinces.

Morocco’s acceptance of the idea of self-determination referendum in the Southern Provinces during the 1981 Nairobi Summit was a favourable response to the international consensus achieved at the time - a consensus which then considered the referendum as the most appropriate means to resolve the Sahara conflict. And the late King, after having been opposed to any referendum idea, actually travelled to Nairobi to attend the African Unity Organization Summit, with a view to convincing his African peers of his determination to resolve the artificial conflict in the Sahara by peaceful and political means. To give proof of the sincerity of the determination, he accepted recourse to referendum-based consultation. Accordingly, and in spite of the difficulty attendant upon the taking of such a decision, and the debate it gave rise to at the domestic level, Morocco’s resolve to abide by the will of the international Community was a determining factor behind its choice.

Along the same lines, the choices made by Morocco have remained unchanged at the temporal level. A reading of some provisions of the Moroccan Autonomy Project underscores the degree of its conformity with international legality. In this connection, the Moroccan Initiative is a response to the will of the Security Council which has been calling “the parties and States of the region to continue to cooperate fully with the United Nations to end the current impasse and to achieve progress towards a political solution” (Point 1 of the Moroccan Autonomy Project) since 2004. Besides, this Initiative “(...) draws inspiration from the relevant
proposals of the United Nations Organization, and from the constitutional provisions in force in countries that are geographically and culturally close to Morocco. It is based on internationally recognized norms and standards” (Point 11 of the Moroccan Autonomy Project). In the same vein, the Initiative deems that “(...) This referendum will constitute a free exercise, by these populations, of their right to self-determination, as per the provisions of international legality, the Charter of the United Nations and the resolutions of the General Assembly and the Security Council” (Point 27 of the Moroccan Autonomy Project).

B. THE REALISM

Unlike the previous projects which have encountered tremendous problems in terms of their implementation, the Moroccan Autonomy Project turns out to be a concrete initiative which finds inspiration in realism. At the origin of the project is the awareness of Moroccan decision-makers that self-determination in the Southern Provinces is unworkable without a novel vision which takes into consideration the inadequacy of projects having as a basis a referendum which comprises an independence option. In fact, one of the major odds encountered by the self-determination referendum-organizing entities had to do with the inability to define, with any measure of exactitude, the electoral body that was really eligible to take part in the consultation. By contrast, the Moroccan Autonomy Project has, thanks to its realism, garnered wide international support, both within the Security Council and outside it, because it is considered as a concrete and realistic solution to the conflict in the Sahara, which has lasted too long already. One of the most noteworthy declarations in this respect was
made by Mr. Peter Van Walsum, the former United Nations special Envoy, in April 2008. The independence of the Southern Provinces, he said “was an unrealistic and unworkable objective,” brushing aside the choice of independence as a final solution.

Furthermore, the creation of an independent State that is devoid of even the most rudimentary viability conditions - notably, continuity and power - is bound to constitute a heavy burden for the entire international Community, and particularly for all the countries of the region. The risk is that the entity is likely to hurl the entire Maghrebi region into a period of trouble and uncertainty. Significantly, the reserves expressed by the international Community with respect to the Polisario’s separatist thesis bespeak a growing awareness of the inappropriateness of creating microscopic States. This is because such entities represent yet another heavy burden to be borne by a world that is already weighed down by several political, economic, and security-related problems. Today, failed States constitute hotbeds for the development of terrorist activities, arms and drug trafficking, as well as violence and Human rights’ violations. The creation of a failed State in the Moroccan Sahara, which opens onto the Atlantic Ocean, will assuredly have a serious impact on world peace and security. Serious concerns have already been voiced regarding the involvement of the Polisario with terrorist groups which engage in illegal activities and harbour hostile intentions against some Maghrebi regimes. On the other hand, the implementation of the Autonomy Plan will certainly have positive impacts on the peoples of the Maghreb: the resolution of the conflict in the Sahara will put an end to political susceptibility, facilitate the economic integration
of the countries in the region, and promote a rapprochement between the peoples.

C. THE CULTURE OF COMPROMISE

The efforts expended by Morocco in order to complete and consolidate its territorial integrity have taken two dimensions. Morocco has enhanced its effective presence as an administrative power in the territory by harnessing military and civil resources which dented in the Polisario’s separatist ambitions at all levels. On the other hand, Morocco has continued to search for a peaceful, consensus-based solution premised on the logic of “no winner and no loser”. In this respect, the pathways of negotiations which Morocco has trodden actually began soon after the country’s independence. Priority was then given to peaceful means in the process of perfecting the Kingdom’s territorial integrity. Notwithstanding some constraints, seen mainly in Spanish obstinacy, the process was indeed a model in peaceful settlement because it not only culminated in the recovery of Sidi Ifni in 1969 but also led Spain to engage in effective negotiations designed to establish Morocco’s sovereignty over its Saharan Provinces. This state of affairs was further consolidated by the great success achieved by the Green March.

In sum, over the last three decades, the main objective sought by Moroccan diplomacy was two-fold: to complete the Kingdom’s territorial integrity and to put an end to the Polisario’s threats, mainly by marginalising the separatist thesis both in regional and international spheres. To this end, and despite the military and logistical weakness of the separatist front, Morocco has always
privileged peaceful means to settle differences and opted for the pathway of negotiation instead of armed struggle. In this connection, the initiative of Morocco to enter into talks with the Polisario in Manhasset is the best evidence that Morocco is resolutely committed to peaceful settlement.

CONCLUSION

While the multiple developments which the question of the Sahara has witnessed, notably in UN corridors, along with the configuration of political and diplomatic power relations among the various protagonists, have prompted Morocco to change its diplomatic strategies and to seek new mechanisms as appropriate to each period, the main permanent characteristics of Moroccan diplomacy have remained invariable, or rather, gained in further strength.

The main characteristics of Moroccan diplomacy, which have been highlighted in this survey, also and to a large degree underpin Morocco’s Autonomy Project. As a result, Morocco has been hailed time and again for its commitments and stands, notably by the great powers which have the last word in international institutions. Presently, Morocco has put forward a sound and realistic initiative apt to resolve the conflict in a definitive way. Meanwhile, the position of the Polisario is increasingly and manifestly on the wane, as evidenced by the great number of countries that have either withdrawn or frozen their recognition of the so-called “Sahrawi Republic” during the last decade.
THE MOROCCAN AUTONOMY PROJECT:
BETWEEN INTERNATIONAL LEGALITY AND
POLITICAL LEGITIMACY

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The success of any political project that has an international dimension draws its strength and its credibility from international legality, as well as from political legitimacy. To this end, States have always taken great care to make their position and projects take on these two characteristics. International legality generally rests upon conventional and customary international law, as well as on the decisions and recommendations arising from international organizations, while political legitimacy refers to the fundaments of the power of the project in question. In this regard, it by far surpasses and outdistances, in many ways, at the level of temporal anteriority as much as regarding the elements of equity, international legality, which is sometimes at the heart of large doctrinal polemics.

Within such a context, one finds that Morocco is not only conscious of the necessary adherence to international legality in order to strengthen its position in the Sahara affair, but takes great care to recall this dimension in all of the initiatives that aim at the
settlement of the conflict. Notwithstanding, Morocco has absolutely not neglected the elements of political legitimacy, above all those pertaining to national consensus and historical ties. Better still, it oftentimes made them prevail in view of their constancy, as well as their anchorage in time and their independence vis-à-vis machinations likely to alter the international rapport of forces, contrary to the rules of international juridical legality, which are often prey to a myriad of doctrinal and political interpretations that are contradictory and narrowly tied up with the interests of the great superpowers.

In view of these considerations, Morocco has made of international legality an element of complementarity to its positions. Indeed, the diverse dimensions, national and international ones alike, of the Moroccan Autonomy Project (MAP) that appear in the Royal speech delivered on 6 November 2007 on the occasion of the celebration of the 32d anniversary of the Green March: “(...) Hence, amid unanimous consensus, and using a consultative approach at both regional and national levels, Morocco presented a bold autonomy initiative which is consistent with global standards and international legality, and which takes into account the region’s social and cultural specificities. Our practical efforts were based on a responsible, realistic approach. They have enjoyed wide international support, and as a result, the United Nations has adopted a new approach to our foremost national issue. It has, once and for all, abandoned all previous unfruitful plans, thus paving the way for the adoption of Security Council Resolution 1754, which singled out the Moroccan Initiative and called it serious and credible (...)”.

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For the purposes of investigating the theme: “Autonomy Between International Legality and Political Legitimacy”, we will look into the principal elements of international legality and will especially focus on autonomy as a form of self-determination, as well as on the conformity of the MAP with international juridical legality (I) before embarking on the study of political legitimacy, which will be delimited in two principal elements; namely, national consensus and historical legitimacy (II).

I. THE CONFORMITY OF THE AUTONOMY PROJECT WITH INTERNATIONAL LEGALITY

Ever since the Sahara dispute was triggered off, Morocco took right away a position on the pathway of international legality. All its initiatives and positions could be testimony thereto. To consider autonomy as a form of self-determination and of international legality constitutes, in this regard, the key element of the international referential upon which granting autonomy to the Sahara region rests.

A. AUTONOMY AS A FORM OF SELF-DETERMINATION

If one of the fundamental characteristics of the right to self-determination, contained as it is in the United Nations Charter and essentially devoted to a phase of decolonization, resides in its external aspect, wherein the liberation movements aimed at the establishment of an independent and sovereign State, self-determination, beyond situations of decolonization, takes an internal aspect that incorporates the right of the concerned populations to achieve their political, social and economic development through
democratic governance. Indeed, the more the external dimension of self-determination orients the relations of a determinate people with its counterparts, with a third State or empire, the more the internal or democratic dimension concerns the relations of a determinate people with its own State or government. ¹

Indeed, given the role of the concept of internal self-determination in the area of achieving peace and stability at the regional level, the international Community has started to endow it with greater importance with a view to containing the secessionist claims that are shorn of any realistic or juridical cause. Autonomy offers thus to be a form of internal self-determination, one that aims at the distribution of powers to the benefit of the local regions and communes. This model often acquires a constitutional framework wherein the central power yields a part of its prerogatives to the local authorities that are concerned with this form of autonomy.

In this case, the Moroccan Initiative for Granting an Autonomy Statute to the Sahara Region took great care to conform to the principle of self-determination, giving it a special dimension in synergy with the specificity of the Moroccan Sahara affair, above all because the doctrine diverges on a precise signification of this concept and, within the same perspective, international experiences vary in both their form and their reach in function of the variation of

the historical, social, cultural as well as ethnic specificities of the concerned regions.

The concept of autonomy is consonant with what we can call in international law “internal self-determination.” The latter refers to the right to exercise political, economic and cultural autonomy within a predefined State, and concretely translates into the establishment of a large control over the process of political, economic, social and cultural development of the concerned region. Point 5 of the Moroccan Autonomy Project falls within this perspective insofar as it stipulates that: “(...) the Sahara populations will themselves run their affairs democratically, through legislative, executive and judicial bodies enjoying exclusive powers. They will have the financial resources needed for the region’s development in all fields, and will take an active part in the nation’s economic, social and cultural life”.

The broadening of local participation in delimiting political economic, social and cultural choices of local development constitutes a vital dimension in the concept of internal self-determination. This method, be it noted, is nothing but the famous “participatory democracy”.

Better still, a part of the doctrine considers that “the right to internal self-determination is a right to democracy”.2 This aspect is equally of a strong presence in the in the text of the Moroccan

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2 Théodore Christakis, « Le droit à l’autodétermination en dehors des situations de décolonisation », Paris, La Documentation Française, 1999, p. 360.
Initiative for Negotiating an Autonomy Statute in the Sahara Region. Several signs on the democratic and participative nature of the recommended autonomy-driven regime are testimony thereto. In fact, the Moroccan Autonomy Project stipulates, in its Point 27, submitting the autonomy regime in the process of negotiations “to the populations concerned in a free referendum. This referendum will constitute a free exercise, by these populations, of their right to self-determination, as per the provisions of international legality, the Charter of the United Nations and the resolutions of the General Assembly and the Security Council”. This sense of self-determination was equally reused in the terms of the letter addressed to the UN Secretary-General concomitantly with the presentation of the Moroccan Initiative, in virtue of which the proposed autonomy “(...) achieves the principle of self-determination, through a free, modern and democratic expression regarding the autonomy statute (...)

B. INTERNATIONAL LEGALITY

Strengthened by the aptness of its statute vis-à-vis the provinces of the South, as well as by the tenacity of its internal front in the face of foreign threats, the Moroccan State has hardly ceased to refer to international juridical legality, which is susceptible of making prevail Morocco’s right to regain its territories and to fully administer them. It is for this that all the Moroccan documents and official discourses refer to this international juridical fundament. Illustrative in this regard is the letter addressed to the UN Secretary-General on the occasion of the presentation by Morocco of its autonomy Initiative, where it reiterates its affirmation of international juridical legality, stated as follows: “(...) As such, it is
in conformity with international legality as well as with international norms and standards applicable in the area of autonomy. It guarantees compliance with - and promotion of human rights as they are universally recognized, and as they are enshrined in the Moroccan Constitution (...)

Besides, the text of the Initiative stipulates that “The Moroccan autonomy project draws inspiration from the relevant proposals of the United Nations Organization, and from the constitutional provisions in force in countries that are geographically and culturally close to Morocco. It is based on internationally recognized norms and standards” (Point 11 of the Moroccan Autonomy Project).

From both these texts, there transpires the commitment of Morocco to tune itself to the UN resolutions and recommendations in connection with the Sahara affair, as well as to the international standards relative to autonomy, such as they are provided for by comparative constitutional law.

In consequence, Morocco took great care to square its autonomy Project with the pertinent international norms, reflecting thus a determining tendency in Moroccan diplomacy. The fact of the matter is that the latter has always favored peaceful solutions at the detriment of other procedures.

The Advisory Opinion, rendered by the International Court of Justice (ICJ) on 16 October 1975, institutes a juridical asset for all the Moroccan Initiatives that aim at the settlement of the Sahara dispute. In fact, the aforementioned Opinion argues for the
existence of historical ties of allegiance between the Sahrawi populations and the respective central powers. The conformity of the Moroccan Initiative to the terms of the Advisory Opinion of the ICJ has served for a solid and credible asset.

In the same spirit of positivity, Morocco has also favorably received the diverse resolutions of the Security Council. It has even integrated them into its autonomy Project, conferring thus upon the latter a realistic depth.

In order to survey the evolution of the content of the UN texts, it is preferable to hearken back to the post-Cold War phase, where some unprecedented dynamism made its way towards definitively resolving the Sahara dispute. Thus, the Security Council unanimously adopted resolution 690 of 29 April 1991 which endorses the Report by the Secretary General relative to the organization of a referendum of self-determination in Western Sahara, and provides for the setting in motion of the UN Mission for the Organization of a Referendum in Western Sahara (MINURSO).

In view of the many obstacles that have stalled the implementation of the settlement Plan of 1991, and given the unrealistic character of the diverse juridical approaches previously advocated for the settlement of the Sahara conflict, the UN Secretary General special Envoy, M. James Baker, proposed in 2001 a project titled “the Framework Agreement on the Statute of Western Sahara”, which is commonly called “Baker Plan I”. The merit of this project was that it laid the ground for some new insight into the eminently political
nature of the dispute around the Sahara, contrary to the essentially juridical approach that was much prevalent before.

And when the Polisario Front rejected the content of this agreement, the special Envoy made public in 2003 yet a second initiative that was called “Baker Plan II”. The text of this initiative, ratified by the Security Council in its resolution 1495 of 31 July 2003, provides for a period of autonomy of 5 years under Moroccan sovereignty, a prelude to the holding of a referendum that was to rule on the definitive fate, as it were, of the Sahrawi territory. It is to be noted that Morocco had submitted some substantial remarks on the text in question. In fact, Morocco assimilated the “Baker II” plan to a backward measure, because it basically resuscitates, through evoking the question of referendum, the so sterile debate on the identification of the electoral body.

Considering what has been aforesaid, Morocco has presented, in synergy with the aspirations of the international Community as well as the spirit of the UN recommendations in this respect, a new base for direct negotiations to which it gives the title: “Moroccan Initiative for Negotiating an Autonomy Statute for the Sahara Region”. In its resolution 1754 of 30 April 2007, the Security Council endorsed, in laudatory terms indeed, the Moroccan Initiative, and expressed how pleased it was with the serious and credible efforts deployed by Morocco in this regard. A number of statements of praise run throughout resolution 1813 of 30 April 2008. In reality, these two UN texts testify to the caducity of all the projects preceding the Moroccan Initiative.
In a nutshell, the Moroccan Autonomy Project partakes in international recommendations and resolutions; namely, those that proceed from the UN Security Council and address the Sahara affair.

II. THE POLITICAL LEGITIMACY OF THE MOROCCAN AUTONOMY PROJECT

Influential as the elements of international legality may be, the Moroccan policy-maker has always founded his sovereign rights in the provinces of the South on elements of political legitimacy, establishing thus the Moroccan Autonomy Plan as a reference to both the national consensus and historical legitimacy.

A. THE NATIONAL CONSENSUS OVER THE MOROCCANESS OF THE SAHARA

Generally, the concept of consensus is defined as a quasi-unanimous agreement between the members of a group on issues and situations that imply a collective decision. On matters of foreign policy, one speaks of consensus when the national community expresses almost fully and in all freedom its adherence to the objectives of foreign policy, as well as its commitment towards their realization. According to James Rosenau, foreign policy is compared to the effort deployed by a national society by way of controlling its international environment through preserving adequate situations as well as improving on inappropriate conjunctures.
The search for consensus is a characteristic in common with all political regimes. In fact, governors have always solicited the support of political and civil actors with a view to giving credibility to their decision, achieving the objectives of foreign policy and reinforcing national unity towards extrinsic elements.

Akin to a multiplicity of States, Moroccan foreign policy takes up a double aspect, consensual and compromise-oriented. Indeed, compromise has been founded in Morocco on the basis of two key considerations: Islamic culture and the nationalistic spirit. The fact that the persistence of external threat, on the part of the colonizer at an earlier point as much as on the part of the Algerian neighbor at a later phase, was a further factor reinforcing that spirit.

Under the reign of the late King Hassan II, compromise results from the Royal speeches under three broad orientations: the principle of non-alignment, regional solidarity at the Arab plane and the recovery of territorial integrity. Nonetheless, it is in favor of the Sahara affair that the consensus of all the national political forces has been most efficiently expressed.

In fact, the State has involved the diverse political parties in information campaigns, at the international level, on the Moroccan conception of the dispute. It has also unconditionally contributed to the success of the Green March, establishing thereby a large national unity around the Sahara affair. Through this consensus, Morocco sought to demonstrate the homogeneity of the internal front vis-à-vis the national constants. Such a tendency has concretely translated in the composition of the Moroccan delegation
to have attended the African Summit held in Addis-Ababa in November 1984.

In fact, the late King Hassan II had invited the elected representatives of all the political formations represented in the Parliament, in abstraction of the rate of their representativeness, to attend a meeting dedicated to the Sahara dossier, where he was to declare that if the provisions of the Parliament’s internal regulations relative to the constitution of parliamentary groups are worthy for the Parliament, they were not necessarily so when it comes to the Sahara question. According to the late King Hassan II, this affair required that all the political formations take part in the delegation representing Morocco in Addis-Ababa.

During the summit, Morocco withdrew from the Organization of African Unity after the latter had agreed to the adhesion of the pseudo-Sahrawi Republic.

Thenceforth, the triumph of national consensus around the Sahara affair was not solely the fruit of the reinforcement of the internal front for the purposes of facing up to external threats, but is equally the fruit of a collective conscience that unites the nationalist imaginary of Moroccans, who by no means conceive of Morocco deprived of its provinces of the South.

B. THE HISTORICAL LEGITIMACY

Throughout history, the Sahara has incarnated the strategic depth of the Moroccan State. The rootedness of the Sahara in Morocco is inscribed within uninterrupted continuity, independently of the
governing dynasty, and despite the sometimes Sahrawi origins of the Sultans of Morocco. Such is an undeniable situation, one that historians have profusely recounted; the ties uniting the Sahrawi tribes to the Moroccan State well and truly manifested themselves under religious, judiciary and political expression. To tell the truth, they reflect the concept of sovereignty proper to the Islamic government, and appear to be more adapted to the modes of nomadic life, hindering by the same token the establishment of permanent administrations.

In view of these fundamental parameters, the adoption of the European concept of “regional sovereignty”, a product of the Westphalia Treaties in 1648, served neither to prove nor to contest the Morocanness of the Sahara. Regional sovereignty is a concept that grows in function of the evolution of political, economic and social situations. In fact, the establishment of this concept in Europe was meant to put an end to the expansionist penchants of European countries, to initiate them into the meaning of the peaceful settlement of disputes and, by the same token, anchor the principle of non-interference in the internal affairs of a State.

However, sovereignty, as perceived through the experience of Islamic government, mainly harbors the religious and spiritual dimensions. The act of allegiance lavished by the populations of a tribe are highly symbolic of the juridical ties that unite them to the central power, not to mention the capacity that the latter has in effectively governing the populations in question. In other terms, the religious dimension of allegiance, coupled with the faith of the populations in its elemental force, suffice by themselves to turn it into a token of juridical power, which explains why an important
number of provinces have for a long time belonged to the central Islamic State in the absence of any tangible signs, administrative or military alike, of some sovereignty that would coerce them into subjection.

In Morocco, the Sultan, in view of his religious and spiritual status, proceeded to the functions of arbitration and mediation between the Sahrawi tribes in conflict, which further reinforced the centralization of his regime. This conciliatory function has always been one of the traditional fundamentals underlying the legitimacy of the Sultan, and has constituted a particular trait of the Moroccan political regime.

At the external level, the national sovereignty over the provinces of the South has been recognized by all the States that maintain political or commercial relations with Morocco, and has also been mentioned in certain conventions binding it with other countries.
PART II

THE MOROCCAN AUTONOMY PROJECT ON THE TEST OF REALISM
CHAPTER I

THE REALIST ASSETS OF THE MOROCCAN AUTONOMY PROJECT
SOME ASPECTS OF THE PRINCIPLE OF
EQUITY IN THE MOROCCAN AUTONOMY
PROJECT

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Equity necessitates the egalitarian and transparent treatment of individuals of the same group, all forms of exclusion and discrimination aside. It is a natural and spontaneous feeling of justice, one that finds root in the “recognition of the rights of everyone”\(^1\), without it being necessarily inspired by the laws in force. One could thus say that the principle of equity is a form of justice that takes into consideration the spirit of the law rather than its drafting, with a view to tempering its effects or making it evolve should, as Aristotle maintains, “it turn out to be insufficient in view of its general character”\(^2\).

Though it is difficult to define the concept of equity, we could put forward the fact that it is a frame of mind that seeks to go beyond what is just at the legal plane. *In fine*, to counter the law when it

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presents some lacunae or turns out to be maladjusted; nay, unjust. In this regard, equitable treatment is underpinned by a non-recorded principle of justice, one that is prior to laws and superior to them. In practice, equity plays a capital role on matters of organizing relations between individuals within society. It oftentimes leaves the judge with the possibility of giving a subjective appreciation when, confronted with a particular case, he detects that no settlement is to be had at the level of law, custom or any other source of Law.

Besides, equity is not synonymous with equality, though the two concepts could often be brought together. Concerning equality, the fact is that it takes two forms. It is either “arithmetic”, consisting thus in putting on equal footing different individuals, whatever their status may be, and granting them equitable advantages; or “geometrical”, in the sense where it becomes appropriate to treat them in function of their merits; that is, a proportional distribution that takes into account the value of everyone. It is notably this second form which is the closest to the notion of equity, for being equitable means giving everyone what they deserve. In other terms, one could give less to one if the other deserves more.

Considering the importance of equity in the peaceful settlement of disputes, a place of preponderance was devoted to it by international public Law. In fact, in the terms of article 38 § 2 of the Statute of the International Court of Justice (ICJ), “This provision shall not prejudice the power of the Court to decide a case ex aequo et bono, if the parties agree thereto”. In this case, the judge could, subject to the express acceptance of the parties concerned, set aside the rule of law in vigor in order to apply the principle of equity.
In sum, the notion of equity is closely related to the supreme realization of justice. The latter could sometimes be understood beyond what is prescribed by the law in force. The text of the Moroccan Autonomy Project, in providing for an equitable distribution of wealth in the Autonomous Sahara Region, an autonomous running of their local affairs, as well as an effective political representativeness, aspires to realize an ideal of justice and equity. In this regard, it stipulates, at the level of Point 3, that the Moroccan Initiative “(...) is part of the endeavors made to build a modern, democratic society, based on the rule of law, collective and individual freedoms, and economic and social development. As such, it brings hope for a better future for the region’s populations, puts an end to separation and exile, and promotes reconciliation”. In its Point 4, the text of the Project adds that “Through this initiative, the Kingdom of Morocco guarantees to all Sahrawis, inside as well as outside the territory, that they will hold a privileged position and play a leading role in the bodies and institutions of the region, without discrimination or exclusion”.

This said, it is appropriate, in order to come to a better measurement of the degree of the applicability of equity in the Moroccan Autonomy Project, to put emphasis on two principal, and equally important, points. In question is, firstly, the part of the Sahrawi populations in national wealth and, secondly, their right to exercise the power of political representativeness.
I. THE SAHARA AUTONOMOUS REGION’S PART OF THE NATIONAL WEALTH

A major factor in social stability is the equitable distribution of wealth. To this end, Point 5 of the Moroccan Autonomy Project underlines that “(...) the Sahara populations (...) will have the financial resources needed for the region’s development in all fields, and will take an active part in the nation’s economic, social and cultural life”. Point 12 falls within the same logic in that it provides for the populations of the Sahara prerogatives in the domain of “budget and taxation”. Likewise, Point 13 stipulates that “The Sahara autonomous Region will have the financial resources required for its development in all areas. Resources will come, in particular, from:

- taxes, duties and regional levies enacted by the Region’s competent authorities;
- proceeds from the exploitation of natural resources allocated to the Region;
- the share of proceeds collected by the State from the exploitation of natural resources located in the Region;
- the necessary funds allocated in keeping with the principle of national solidarity;
- proceeds from the Region’s assets”.

In view of these provisions, one could say that the management of the financial resources allocated to the Autonomous Sahara Region within the framework of the Autonomy Project rests on three fundamental principles. The following are in order:
Financial autonomy.
The diversification of financial resources.
National solidarity.

A. THE PRINCIPLE OF FINANCIAL AUTONOMY

In light of the successful international experiences on matters of autonomy, and contrary to the provisions of the Moroccan Law n° 47.96 relative to regional organization, which imposes upon local collectivities some financial supervision, the Autonomy Project provides for a financial system that is beneficial to the Sahara region insofar as it earmarks for the latter some proper funding resources, with an autonomous budgetary management, and far from any intervention on the part of the organs of the central State. This mode of management is applicable at the level of the autonomy-oriented regimes set in place in the democratically most developed countries.

In Canada, for instance, there exists an exclusive control of Provincial legislation: article 92 of the Canadian Constitution stipulates in fact that “in each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say: (...) 2. Direct Taxation within the Province in order to the raising of Revenue for Provincial Purposes. 3. The borrowing of Money on the sole Credit of the Province (...)”.

Likewise, article 175 of the Belgian Constitution of 17 February 1994 states that “the French and Flemish Community Councils decide upon the spending of their respective attributions by
Within the same vein still, article 129 of the federal Constitution of the Swiss Federation, of 18 April 1999, specifies that “the Federation establishes principles on the harmonization of direct taxes of the Federation, Cantons, and Municipalities; it considers the harmonization efforts of the Cantons”. Moreover, article 131 paragraph 3 of the same Constitution specifies that “the Cantons receive 10 percent of the net proceeds out of taxation on distilled spirits. These funds are to be used to fight causes and effects of addiction”.

It is thus that the Moroccan Autonomy Project evokes, akin to several similar legislations, financial autonomy as one of the requisite guarantees for any autonomy-based regime.

**B. THE PRINCIPLE OF DIVERSIFICATION OF FINANCIAL RESOURCES**

The Moroccan Autonomy Project is to be situated at the level of the great workshops that have been launched for some years now. In proposing to the populations of the Sahara the running of their own affairs, one operates within a logic that demands a greater margin of freedom for the elected bodies on matters pertaining to the fixing of strategies and local priorities.

A self-management of local affairs, coupled with a speeding up of the rhythm of development at several levels, requires enormous financial means. To this end, the Moroccan Initiative foresaw a non-exhaustive list of sources of revenue deemed to be vital for the implementation as well as good running of the autonomy regime at the level of the Moroccan provinces of the South. These financial means are diversified, and are composed of two sorts of revenues:
tax and non-tax revenues. Globally, taxes and duties, which by far constitute the greatest source of revenue for the State, are commonly designated by the expression: “tax revenues”. The rights and licenses, the diverse revenues of the government, as well as the transfers of State-run companies constitute, in turn, the principal “non-tax revenues”.

In concentrating on tax revenues at the level of the Sahara Autonomous Region, one observes that several sectors of activity can be the object of tax deductions that will, in fine, generate revenues that cannot be underestimated. Among other, one would mention in this regard, income tax (salaries, profits, dividends, rent, etc.), company tax, as well as income tax on real estate equity. Besides, other indirect taxes could equally be deducted at the level of certain activities such as consumption, the circulation of goods as well as services.

C. THE PRINCIPLE OF NATIONAL SOLIDARITY

Unity and solidarity are two of the salient specificities of Moroccan people. This culture has been established in countries through the customs and social practices that have evolved only to become institutionalized. The concept of solidarity is present at the level of the Moroccan Autonomy Project, which provides for the Sahara Autonomous Region the possibility to benefit from the subsidies and the assistance given by the Moroccan State within the framework of national solidarity. Several developed countries have indeed adopted this principle, and have equally mentioned it at the level of their legislations. Thus, article 96 of the Australian Constitution of 1900, confers upon the federal Government the
power to make donations to the federated States, within the terms and conditions that the Parliament considers to be opportune.

Likewise, the fundamental law for the Federal Republic of Germany (FRG), of 23 May 1949, mentions in its article 104, paragraph b, that “the Federation may grant the Laender financial assistance for particularly important investments by the Laender or communes or associations of communes, provided that such investments are necessary:

1. to avert a disturbance of the overall economic equilibrium;
2. to equalize differences of economic capacities within the federal territory;
3. to promote economic growth”.

In turn, the Swiss federal Constitution provides, in its article 46 §3, that “the Federation takes into account the financial burden associated with implementing the federal law by leaving sufficient financial resources to the Cantons and by taking care of an equitable financial adjustment”.

National solidarity comprises several dimensions. Thus, in addition to State subsidies, the Autonomous Region would benefit from loans that are allocated by the national financial Institutions, with a view to covering a budgetary deficit, or putting in place some development projects. The Region could equally take profit from the services offered by the governmental authorities, as well as from the provincial Agencies of development that operate in the social domain. Besides, the Region will benefit from the services of the organs of civil society, notably “Mohammed VI Foundation for
Solidarity”, which is presided by His Majesty King Mohammed VI, and the activities of which multiply to take into the fold projects with a humanitarian dimension, such as the eradication of poverty, assistance with social rehabilitation and, in a general manner, the realization of global development goals.

II. THE RIGHT OF THE POPULATIONS OF THE SAHARA TO THE EXERCISE OF POWER AND POLITICAL REPRESENTATIVENESS

At this level, it is appropriate to lay stress on the nature of the competences vested upon the populations of the Sahara, as well as on the degree of their empowerment in this direction, notably concerning the exercise of power and political representativeness.

The Moroccan Autonomy Project specifies in its Point 5 that “(...) the Sahara populations will themselves run their affairs democratically, through legislative, executive and judicial bodies enjoying exclusive powers (...).” In the same vein, Point 12 stipulates that “In keeping with democratic principles and procedures, and acting through legislative, executive and judicial bodies, the populations of the Sahara autonomous Region shall exercise powers, within the Region’s territorial boundaries, mainly over the following:

❖ Region’s local administration, local police force and jurisdictions;
❖ In the economic sector: economic development, regional planning, promotion of investment, trade, industry, tourism and agriculture;
❖ Region’s budget and taxation;
❖ Infrastructure: water, hydraulic facilities, electricity, public works and transportation;
❖ In the social sector: housing, education, health, employment, sports, social welfare and social security;
❖ Cultural affairs, including promotion of the Saharan Hassani cultural heritage;
❖ Environment”.

Other attributions will equally fall within the prerogatives of the elected Authorities at the level of the Sahara Autonomous Region. Point 17 of the Moroccan Autonomy Initiative stipulates that “(...) powers which are not specifically entrusted to a given party shall be exercised by common agreement, on the basis of the principle of subsidiarity”.

Two conclusions can be withdrawn from the aforesaid. On the one hand, the Moroccan Autonomy Project has widened the scope of the competences of the populations of the Sahara by conferring upon them attributions on matters pertaining to the running of local affairs, be they administrative, economic, social or cultural. On the other hand, with a view to guaranteeing the concerned Region an effective participation in national political life, the Autonomy Project has provided for three important institutions, notably: a regional Parliament, a Government and some regional jurisdictions, in addition to three authorities - legislative, executive and judiciary - the separation of which remains a fundamental element of democratic regimes. These authorities deserve to be examined separately with a view to highlighting their importance, as well as the role vested upon them in the area of local decision-making.
A. THE LEGISLATIVE AUTHORITY

Pursuant to Point 19 of the Moroccan Autonomy Project, the legislative authority in the Sahara Autonomous Region is represented by a “(...) Parliament (...) made up of members elected by the various Sahrawi tribes, and of members elected by direct universal suffrage, by the Region’s population. There shall be adequate representation of women in the Parliament of the Sahara autonomous Region”.

This combination of the regional Parliament, as stipulated by the Autonomy Initiative, goes on a par with the principle of equity, because it guarantees a representativeness of the different strata of the Sahrawi population. Moreover, the Moroccan Project has not evoked any details on the mode of organization or functioning of the legislative apparatus. In this respect, it left free will to the concerned populations, the condition being; however, the respect for the Constitutional provisions of the Kingdom.

With the setting in motion of the autonomy regime in the Moroccan provinces of the South, some steps have to be undertaken with a view to securing the good functioning of the regional legislative apparatus. It will be a question of putting in place an appropriate parliamentary system, be it mono-cameral or bicameral, as well as determining the number of members of the Institution, the mode and criteria relative to their eligibility, not to mention the elaboration of a system that caters to electoral disputes. These approaches can be comprised within an organizational juridical order akin to what exists in more advanced countries as far as autonomy is concerned. Besides, it is important to specify the
criteria relative to the election of the President of the regional Parliament, to parliamentary immunity, the mode of opening and closure of sessions, as well as the composition of the parliamentary committees. Other actions of an organizational nature will follow suit. Notably in order here are:

- The procedure relative to the proposal of laws.
- The procedure relative to the passing of laws, in particular Fiscal Law.
- The procedure of law promulgation.

Note that, for the last case, the decisions taken have to be in conformity with article 26 of the Moroccan Constitution, pursuant to which “The King shall promulgate a definitively adopted law within the thirty days following its receipt by the Government”.

Coupled with its legislative function, the regional Parliament could monitor the work of the regional Government. The most known mechanism in this regard is the practice of oral questions. Besides, some written questions can equally be destined to the regional Government. They generally bear on problems of a technical order. A parliamentary select committee could in addition be created with a view to collecting data on a determinate fact or situation.

B. THE EXECUTIVE AUTHORITY

In conformity with Point 20 of the Moroccan Autonomy Project, “Executive authority in the Sahara autonomous Region shall lie with a Head of Government, to be elected by the regional Parliament. He shall be invested by the King (…)”. Also, Point 21
stipulates that “The Head of Government of the Sahara autonomous Region shall form the Region’s Cabinet and appoint the administrators needed to exercise the powers devolving upon him, under the present autonomy Statute. He shall be answerable to the Region’s Parliament”.

The election of the Head of the regional Government by the legislative Institution is a guarantee to the populations of the Sahara that the government in place will be subject to control, and that its continuity will depend on the realization of the objectives set, as well as the degree of trust it enjoys.

Likewise, the nomination of the regional Head of Government by the King takes a very particular significance, in the sense where he will be, as a first head, answerable to the Sovereign who, pursuant to the terms of article 19 of the Moroccan Constitution, is “(…) the Supreme Representative of the Nation and the Symbol of the unity thereof. He shall be the guarantor of the perpetuation and the continuity of the State (…) the Protector of the rights and liberties of the citizens, social groups and organizations (…)”. In addition, this nomination ought to allow the regional Head of Government to take part in the Council of ministers wherein the broad lines of the general policy of the Moroccan State are outlined. Needless to recall here that the Council of ministers is presided by the King.

Notwithstanding, it is incumbent upon the regional Head of Government, after forming the governmental team, to lay out his work program before the regional Parliament. The program ought to include the broad lines of the governmental policy to be envisioned
in the different sectors, as well as the perspectives of cooperation with the other foreign Regions.

Once gaining the trust of the regional Parliament, the regional Head of the Government undertakes the necessary measures with a view to putting its program in place, implementing the law and coordinating the activities of different governmental departments at the level of the Region.

C. THE JUDICIARY AUTHORITY

In order to guarantee respect for Human rights, such as they are recognized by the international provisions as well as the Constitution of the Kingdom, the Autonomy Project provides for the putting in place of judiciary organs for the populations of the Sahara. They are composed of ordinary regional Tribunals as well as a Higher Regional Tribunal. To this end, the Autonomy Project stipulates, in its Point 22, that “Courts may be set up by the regional Parliament to give rulings on disputes arising from enforcement of norms enacted by the competent bodies of the Sahara autonomous Region. These courts shall give their rulings with complete independence, in the name of the King”. Point 23 adds that “As the highest jurisdiction of the Sahara autonomous Region, the high regional court shall give final decisions regarding the interpretation of the Region’s legislation, without prejudice to the powers of the Kingdom’s Supreme Court or Constitutional Council”.

The Moroccan Autonomy Project has thus taken into account the most recognized standards at the international plane in the area of
determining the nature and functioning of jurisdictions at the level of the Sahara autonomous Region. It has also provided for the procedures to be followed by way of controlling the constitutionality of laws, as well as their implementation. Some courses of action have nevertheless to be incessantly undertaken. In order here are the following:

- To classify the categories of regional Tribunals, be they ordinary, administrative, commercial or financial.
- To determine the number of Tribunals, their area of territorial competence, as well as the attributions that are entrusted with them.
- To put in place the procedure relative to the nomination of judges.
- To specify the immunities inherent to judges and the guarantees relative to their status.

Through the three Organs provided for by the Moroccan Autonomy Project, the populations of the Sahara “will themselves run their affairs democratically” within the framework of respect for the sovereignty of the Kingdom, for the constants of its foreign policy as well as the internationally recognized standards on matters of autonomy-based regime. In addition, beyond political representativeness at the local level, the Moroccan decision-maker, desiring to consolidate the principle of the juridical and political unity of the State, has mentioned at the level of Point 18 of the Autonomy Initiative, that “The populations of the Sahara Autonomous Region shall be represented in Parliament and in the other national institutions. They shall take part in all national elections”.
CONCLUSION

In conformity with the Moroccan Autonomy Project, the Moroccan State delegates an important part of its power to the populations of the Sahara. It will confer on them, in fact, some enlarged competences on matters pertaining to the running of local affairs, as well as the management of the financial means necessary for securing an exemplary governance of the region. These attributions are consolidated by the putting in place of three principal Institutions -legislative, executive and judiciary-which are indispensable in any democratic management, the objective being to guarantee the rights and liberties of all Sahrawis, and to speed up the rhythm of development at the level of the provinces of the South. Note that democracy and development have been the principal themes of the strategy adopted by the Moroccan State ever since the accession of His Majesty Mohammed VI to the throne. Moreover, as mentioned in Point 18 of the Project, the Sahrawi populations will be represented at the different Institutions of the Kingdom, including the Parliament, and will take their part in national electoral consultations.

In sum, autonomous management, the equitable distribution of national wealth, as well as political representativeness are the great vested interests proposed to the populations of the Sahara by the Moroccan Autonomy Project. This new philosophy is consonant with international practice on matters pertaining to the autonomous running of affairs. It concretizes, as best as could be, one of the essential fundaments of social sciences; namely, the principle of equity.
ABSTRACT

Penal justice occupies a place of choice in the Moroccan Autonomy Project (MAP). A reading of the text of the Initiative allows for telling of its principal orientations. Two functions will ensue thus from this form of justice in the Autonomous Sahara Region. On the one hand, to settle the conflicts of the past within a spirit of reconciliation and reparation and, on the other, to put in place, within a future-oriented perspective, a system of delinquency control, one that is based on respect for Human rights as well as on the local administration of justice.

One of the bases of reparatory justice is reconciliation. In light of this principle, the Autonomy Plan, in its Point 31, evokes the concept of Amnesty, but other paths are equally conceivable.

The political and juridical stakes that crystallize the contemporary international system hinge around some extreme situations that most often lead to violent confrontations. Here is why it has become
more and more necessary to have an agile management of the contradictions that cripple democratic ideals. These divergences of interest require the search for a compromise susceptible of washing away all violence, but also of forestalling all forms of conflict.

The Sahara conflict has undergone abuses and violations of the laws of war, but not as grievous as those committed in other regional conflicts that have necessitated the creation of international penal courts of justice, such as those of ex-Yugoslavia or Rwanda.

Amnesty in the Autonomy Plan will take the form of a law. Its field of application will be very wide since it will not only exclude measures of a penal nature such as pursuits, arrests, detentions and imprisonment against law-breakers, but any other form of intimidation whatever. Besides, Amnesty is not the only underscored procedure. Morocco took interest in the question of settling past abuses. The creation of Equity and Reconciliation Commission (ERC) is one of the most successful experiences worldwide. It is, by the same token, a good example to follow. In fact, the Moroccan experience of ERC, eventually fortified by that of the reparatory justice of other countries such as Canada, maybe capitalized on with a view to putting in place a formula which will be such as to contribute to the reparation of the damages caused by the Sahara conflict.

Besides, the Autonomy Plan does not only lay the foundations of a penal justice for the settlement of past conflicts, but equally promulgates the guiding principles of a system of penal justice.
THE MOROCCAN AUTONOMY PROJECT:
AN INSTRUMENT FOR A CONSTITUTIONAL
JUSTICE

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ABSTRACT

The Moroccan Autonomy Project (MAP) constitutes an efficient instrument for the development of Constitutional justice in Morocco. In fact, it stipulates in its Point 24 that: “Laws, regulations and court rulings issued by the bodies of the Sahara autonomous Region shall be consistent with the Region’s autonomy Statute and with the Kingdom’s Constitution”.

The autonomy Statute does not make up a “screen”, that is, it does not govern a given situation and does not, by further extension, stand between the regional act and the Constitution. In accord with this hypothesis, the acts of the organs of the autonomous Region have to be directly examined when it comes to their conformity with the Constitution.
The benefit that establishing a hierarchical structure such as this one is to preserve to each authority, as well as to the acts that they are entitled to decree, the place that falls to them within the internal juridical order, competence being otherwise of a public order. However, this hierarchy is only applicable if its respect is sanctioned by a judge, most notably. As far as our subject is concerned, it is a question of the constitutional judge.

It is appropriate then to examine two successive questions: the Constitution as the supreme source of norms (I), and the control of the constitutionality of the acts emanating from the organs of the autonomous Region (II).

I. THE CONSTITUTION AS A SUPREME SOURCE OF THE JURIDICAL NORMS OF THE STATE

The Constitution formulates certain principles and fundamental rights that are incumbent upon the legislator as well as the administration in charge of implementing laws. As regards political and administrative matters, the Constitution provides for several important rules:

- The distribution of competences between the King, the Government and the Parliament.
- The distribution of competences between the Parliament and the Government by fixing those matters that fall within the law, the others pertaining to the statutory domain; the possibility for the government to intervene on legislative matters (article 55 of the Constitution).
The drafting of the organization and principles governing the democratic running of local collectivities.

As to the Preamble, the fact is that establishes few principles, in view of the fact that it does not refer to other texts that would include it, such as the Declaration of 1789 and the Preamble of 1946 in France, for instance. Another reason is the fact that most of the principles issued in France from this reference have been incorporated by the Moroccan Constitution in its title I. This specific point having been made, there follows from the Preamble some fundamental principles such as the Islamic character of the State; the official character of Arabic; the adherence to the principles, rights and obligations arising from the charters of international bodies; the reaffirmation of Morocco’s attachment to Human rights such as they are universally recognized.

Yet, there exists a strong presumption in favor of the constitutional value of the Preamble, which is inferred from the constitutional text itself as well as from jurisprudence.

II. THE CONTROL OF CONSTITUTIONALITY FOLLOWING THE IMPLEMENTATION OF THE AUTONOMY STATUTE

The Moroccan Autonomy Project provides for legislative attributions to be exercised by the Parliament of the autonomous region, as well as executive attributions that include the enactment of administrative acts that fall with the Head of the regional Government. It is appropriate then to specify this new hierarchy of norms at the regional level, and to situate it later in relation to the entire national juridical order, including all the consequences deriving therefrom. This specification will allow us to delimit with
some precision the procedures followed by and the role of the Constitutional Council in monitoring the constitutionality of the legislative and statutory acts arising from the bodies of the autonomous region.

Also, any regional law that would violate the provisions of the autonomy Statute directly proceeding from the Constitution, will of necessity be contrary to the Constitution. The same will apply to every other law which, without manifestly being contrary to the express provisions of the autonomy Statute, violates one of the general principles deriving from the Constitution or belonging to the “bloc of Constitutionality”. Controlling the constitutionality of regional laws comes under the exclusive jurisdiction of the Constitutional Council.

The case of statutory acts is different; the schema in application at the national level could be transposed to the regional level. The rules of implementation as well as the autonomous rules are appreciated for their conformity to the regional laws within the framework of the monitoring of the legality exercised by the administrative judge.

The monitoring of the conformity of the legislative acts emanating from the organs of the autonomous Region will fall under the authority of the Constitutional Council.

Also, the hypotheses pertaining to the amendment of legislated bills and to the “unsuitability” of any proposal or amendment considered outside the purview of the legislative power, successively provided for by the articles 48 and 53 of the Constitution, could well be
transposed to the regional level, with amendments notably concerning the competent authority to refer the case to the Constitutional Council, which is the Head of the regional Government in this specific case. The fact of the matter is that, as the two hypotheses mutually put into question the regional authorities, it is not necessary to call for the involvement of the central power.

As to the hypothesis related to the law’s consistency with the Constitution, as provided for by the article 81, the procedure must be different, because the control is of a more general scope, and concerns the constitutionality of regional laws.

Finally, when it comes to the control of conformity to the Constitution of the statutory acts emanating from the organs of the autonomous region, the fact is that it cannot be exercised unless the act submitted to the judge does not find any direct foundation in a law, in which case the law, standing between the administrative act and the Constitution, makes up a “screen”, which implies that an unconstitutional administrative act, which is taken on the basis of a law that is itself unconstitutional cannot be censored: such is the theory of the law-screen. The ordinary or administrative judge can in no way dismiss the application of a law because it is contrary to the Constitution.
CHAPTER II

THE REALIST COMBINATIONS OF THE
MOROCCAN AUTONOMY PROJECT
THE REALISM OF THE AUTONOMY PROJECT

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INTRODUCTION

The autonomy Project proposed by the Kingdom of Morocco with a view to settling the Sahara conflict has been able to rally all the integral parts of Moroccan society such as political parties, cultural, social and economic associations and institutions. The Moroccan Sovereign has, in turn, reiterated, time and again, the commitment of Morocco to set in motion the aforesaid Project in conformity with international norms, notably resolution 1813 of the Security Council, dated 30 April 2008, which seeks to find a definitive political solution to the Sahara dispute. And despite the polemics, oftentimes the criticism, triggered by the Moroccan proposal, the latter has been of great interest within the Security Council, as well as in several countries.

The present article offers to tackle, in view of the conformity of the autonomy Project to the exigencies of international legality and the principles of political realism, four essential points.
Firstly, to demonstrate the degree of attachment by Morocco to international norms including, respect for freedom, the logic of compromise as well as the choice of the path of negotiations.

Secondly, to highlight the manifestations of political realism in the Moroccan Project which, contrary to the separatist approaches adopted by the other parties, combines together, flexibility a community of interests and a dynamic of negotiations.

Thirdly, to lay emphasis on the critique of the “right to self-determination”, and finally expose how the Moroccan Project of autonomy has been able, thanks to its political realism as well as its conformity with international legality, convince the international Community that, only it, could be a definitive solution to the Sahara dispute, a solution that is founded upon democratic political dialogue and which preserves the sovereignty of the Kingdom, its unity as well as its territorial integrity.

I. THE CONFORMITY OF THE MOROCCAN AUTONOMY PROJECT WITH INTERNATIONAL LEGALITY

If the Moroccan Initiative for Granting an Autonomy Statute to the Sahara Region falls within the continued process of settling this conflict, it confirms the attachment that Morocco has to international customs and conventions. This choice offers today a real alternative to all the approaches that have been adopted in this direction, all the more so because the opponents of the Kingdom have manifested no disposition that favors the settlement of the problem. However, Morocco has started this approach in “good faith” and optimism, its main concern being to come to a solution
that takes into consideration the construction of a common future for the countries of the Maghreb.

Back in 1985, the Organization of the United Nations (UN) undertook a mission of good offices which led to settlement proposals that were accepted, on principle, by Morocco and the Polisario Front in August 1988. In 1991, the Security Council decided to create the UN Mission for the Organization of a Referendum in Western Sahara (MINURSO).

Morocco’s commitment in favor of a negotiated and definitive political solution, one that is mutually acceptable within the framework of the autonomy Project, is in keeping with the goals and principles of the United Nations Charter insofar as it reconciles the principle of self-determination with the respect for territorial integrity, all the while guaranteeing the political, economic, social and cultural rights of the populations of the Sahara.

Falling within this orientation, which takes advantage of the support given by the international Community and the UN, Morocco has always manifested its disposition to endeavor towards finding a political solution to the conflict, and to confer upon the inhabitants of the region the possibility of managing their own regional affairs within the framework of national sovereignty.

Also, realistic and balanced as it is, the autonomy Project recommends the definitive settlement of the Sahara dispute through a democratic, modern as well as civilized approach. This Project, which grants the autonomous region some exclusive competences, is an innovative and daring move. Thus, in order to respond to international solicitations, Morocco has had a conciliatory attitude
within the UN. Indeed, it has always abided by the obligation for a peaceful settlement of the dispute by taking recourse to diplomatic and judiciary procedures, such as the referral to the International Court of Justice (ICJ), and its involvement of the populations of the provinces of the South in this process, notably the notables and the actors of civil society, as regrouped within the Royal Advisory Council for Saharan Affairs (CORCAS). Indeed, in establishing CORCAS in March 2006, Morocco prepared essential grounds for its culture of dialogue. However, the Polisario, supported as it is by Algeria, held onto its anachronistic discourse on “the right to self-determination,” which was exploited for the express purpose of misappropriating the humanitarian aid that was destined by international organizations to the detainees of the Tindouf camps.

The international legality to which the autonomy Project makes reference, compatible as it is with the resolutions of the Security Council 1754 of 30 April 2007 and 1813 of 30 April 2008, does not exclusively hinge on the principle of self-determination.

II. THE REALISM OF THE AUTONOMY PROPOSAL

Morocco is convinced that the path of negotiations is the best opportunity to close off the Sahara dossier and, by the same token, put an end to the suffering of the detainees. The Moroccan Sovereign reiterated, in this regard, the Kingdom’s unwavering commitment to come to a negotiated and definitive solution that hinges around the autonomy Project. In opting for the negotiated and realistic settlement, a principle confirmed by the Security Council and endorsed by resolution 1754, Morocco has thus shown
evidence of flexibility, an alternative that has long been wished for by the United Nations and international public opinion at large.

The Moroccan autonomy Project is a revealing index of the state of progress of the process of democratization and the edification of the Rule of Law in Morocco. It also testifies to the maturity of Moroccan diplomacy, as well as its profound respect for international laws and norms in handling such a thorny dossier as the Sahara affair. The Moroccan autonomy Project also constitutes a solution for the resolution of all the problems that the Maghreb region is faced up with. In this context, the persistence of this conflict will constitute a serious threat to the interests of the great powers, notably in sub-Saharan Africa; in view of Morocco’s strategic position, it is quite important to gauge the importance of the separatist danger, as well as the threat that it presses, to differing degrees, on the stability of the region. The autonomy Project is then the only solution that could serve the unity of the Maghreb.

More explicitly, the autonomy Project will allow for the re-launch, on fresh grounds, the Project concerning the construction of the Maghreb, the fight against the separatist tendencies that threaten the whole region, as well as the revalorization of the customs and norms of the modern State. In fact, with this autonomy Project, we have moved away from the right to self-determination leading to independence on to democratic self-determination, and to its incarnation at the local plane; namely, the respect for the principle of the territorial integrity of States.

It is no surprise then to find minority groups that reject the self-determination that leads to independence, and which seeks to
elaborate integrated policies that ultimately seek inclusion on the basis of the Rule of Law and the advancement of local governance.

In this context, it is necessary to underline the profound changes that have impacted the very notion of State within public international Law. In the same vein, if the principle of territorial integrity excludes self-determination leading to independence, it provides, on the other hand, for the right to democratic self-determination at the local level, insofar is the only solution that could put an end to the conflict around the Sahara, and settle the problem of borders between the States, a situation that was inherited from the colonial period.

Self-determination does not necessarily mean independence, but rather the local autonomous management, under the sovereignty of the State, and far from the logic of fragmentation and balkanization.

Autonomy is then perceived as a compromise solution, one that is based on a realism that guarantees for Morocco the respect for its national sovereignty, and involves the populations of the Sahara in the autonomous management of their own affairs, far from the separatist theses that threaten all the countries of the Maghreb and drag the region into the abyss of under-development, dissidence and violence. In this context, some observers consider the autonomy Project as a compromise option between “the right to self-determination”, claimed by the adverse party in 1990 and the referendum. The Polisario, supported by Algeria, still holds onto the formula of “self-determination leading to independence” which has no realistic foundation whatsoever, considering the strong social and tribal relations that have for centuries now tied the inhabitants
of the Sahara to the Moroccan State. Tribal, social and cultural interferences do not bear division or dismantling. This is precisely what was confirmed by Morocco in the year 1990 when the UN expressed its will to put this principle into practice. Morocco made it explicit that this option does not square with the nature of relations existing between Morocco and the Sahara region, and contested the procedures that were followed outside established norms in connection with the identification of Sahrawis. It is for this reason that the United Nations did not really take this unrealistic and inapplicable choice seriously, and looked for a solution that was to be compatible with the specificities of the Sahara dossier.

International political realism and pragmatism call for abandoning the creation of micro-States that do not have the conditions *sine qua non* for their edification and survival. It is not indeed by multiplying micro-States that one could come to secure peace and stability in the region. Contrary to this logic, the Moroccan autonomy proposal, which is based on the principle of wealth distribution, adopts a method of regional system which is an essential element of participative democracy. The question for Morocco is to move from an administrative organization to an entirely new type of organization, as it is the case in certain countries such as Spain, Belgium, the United States, or Federal Germany. In parallel, the work Group on minorities, established in conformity with resolution 1995 of 25 July 1995 of the Economic and Social Council of the United Nations, which is a subsidiary organ of the Sub-commission of the promotion and protection of Human rights, showed the difficulty, and sometimes even the failure, in implementing the principle of self-determination leading to independence as a mode of settlement for conflicts in the world.
III. THE UNREALISM OF THE OPTION OF “INDEPENDENCE”

The UN Charter reaffirms the right of people to self-determination, and vigorously highlights the right of people to self-determination. Despite these happy declarations by the international Community, a number of countries still remain under colonial subjection. The consequences and dimensions that result therefrom are still a bone of contention for researchers. In particular, the juridical dimension, which must not be viewed from a single angle, and the political dimension, which often takes up a realistic character.

Ever since 1945, the invocation of “self-determination” by the anti-colonialist majority with a view to speeding up the independence of colonial people has been marked by political considerations that are specific to each case of decolonization. At this level, the self-determination leading to independence is incompatible with the principle of territorial integrity and the stability of States. A State that defends the integrity of its territory generally considers all its citizens as a unique people that could nevertheless enjoy its right to self-determination through participation in the construction of the country on the basis of territorial integrity. This principle constitutes a limit to the application of the right of people to self-determination. Resolution 1514 of 14 December 1960, adopted by the General Assembly of the United Nations, admits this limit and devotes thereto paragraph 6, which clearly stipulates that “Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations”.
Within the framework of the international System, the positive right founded on the notion of State and on the respect for national borders, discards self-determination leading to independence. Likewise, other States are not authorized to push forward this will towards separation, because ultimately, this secession is incompatible with the will of the other groups that wish to live within the framework of a unified nation-State.

International Law brushes aside the option of self-determination leading to independence when it clogs the completion of territorial integrity. The right of people to self-determination cannot be misconstrued as authorizing or encouraging an action that threatens, fully or partially, the territorial integrity of States and international stability. It is to be noted that upwards of five hundred groups throughout the world claim to own the elements of their proper identity and; consequently, a quarter of the member countries of the UN is threatened by division precisely because of self-determination leading to independence. Such is the case of Tibet in China, Québec in Canada, Chechnya in Russia, or Corsica in France.

Today, the world is conscious that separatism is a danger that threatens the equilibrium of States and the international Community, for ever since the Cold War, the number of internal conflicts is higher than those existing between States.

The international recognition of “micro-States” launches anew the debate on the fragmentation of the international System in general and on the future of States in particular. The observation of international realities shows a strong tendency towards the
fragmentation of international space. Certainly, the future lies in the merger of States within the framework of federal systems or of confederations; that is, a return to “macro-States” so as to realize economic development and political openness. Self-determination is without a modicum of doubt not an appropriate response to the nature of ties uniting the Sahrawis to Morocco. It is an inconceivable exit within a selfsame nation. A testimony of this is the refusal by Algeria, at the dawn of its independence in 1962, of the French Project that sought to grant the Algerian Sahara South of the line “Ifly”, “Hassi Massud” and “Hassi R’mel”, the right to self-determination, considering such a move as an incitement to separation, while, in turn, it corroborates the rhetoric of self-determination adopted by the Polisario.

And since Algeria considers this right as being a colonial manoeuvre, why does it then impede the unity of Morocco? And how can it prompt the Sahrawis to break away from their motherland?

Let us admit that Morocco grants the Sahrawis their proper independence, what would be then the chances of seeing their life conditions improving within the framework of separation, compared to the important guarantees that they have for blossoming under Moroccan sovereignty?

The development realized by Morocco in the Sahara territories since 1975 confirms the efficiency and modernity of democratic self-determination, as well as its incarnation at the local level. The self-determination leading to independence is incompatible with every which “democratic system” that seeks to preserve the
territorial integrity of the State. Indeed, the development of democracy, coupled with the crisis of State territoriality, have made it such that the right to self-determination takes back its original and authentic meaning; namely, the right that populations have for representing national sovereignty, as well as governing themselves by themselves. The triumph of “human reason” explains the fact that the right to self-determination has ceased to be a systematic right to independence only to become a right to democratic self-governance at the national and local scales governed by the principle of territorial autonomy.

IV. INTERNATIONAL SUPPORT FOR THE AUTONOMY PROJECT

The international Community has multiplied the positive signs in favor of the autonomy Project proposed by Morocco, testifying as it does to a growing support for a consensual political solution within the framework of international legality. On the contrary, the facts demonstrate a manifest erosion of support for separatist theses.

Morocco received an unparalleled support from the American administration, which is concerned with reinforcing its commitment for peace in the region. The former Personal Envoy of the UN Secretary General for Western Sahara, Peter Van Walsum, had the same position, emphasizing as he has that the only possible way out of the Sahara dispute remains the path of negotiations, the only alternative that could bring, according to him, a solution to the conflict without leading to the total independence of the provinces of the South. Hence, the fourth Commission of the UN General Assembly adopted by consensus a resolution on the question of the
Sahara, supporting thereby the process of negotiations under way, and pleased with the commitment of the parties to enter into more intense negotiations. It backed up the process of negotiations initiated by resolution 1754 of 30 April 2007, and endorsed by resolutions 1783 of October 2007 and 1813 of 30 April 2008. Algeria vainly tried, at the level of the fourth Commission of the General Assembly, to have adopted a resolution that ignores the last development in the Sahara dossier, notably resolutions 1783 and 1813.

Within the framework of the 63rd session of the UN General Assembly, the Moroccan delegation composed of the Prime Minister Abbas El Fassi and the Minister of Foreign Affairs and Cooperation, Taib Fassi Fihri, benefitted from the support of the heads of State and governments of several countries. Some American officials praised, on the same occasion, the Moroccan proposal for granting a large autonomy to the Sahara as being a serious, credible and realistic initiative that could pave a promising way towards the resolution of the Sahara dispute.

Within the same perspective, the representative of the United States at the Security Council affirmed that an independent State in the Sahara is not a realistic option, and that an autonomy under Moroccan sovereignty is the only plausible solution, adding that the Sahara conflict has only been dragging on, provoking tensions and human suffering, as well as impeding any steps forward towards regional integration in North Africa.

As to France, the fact is that it has at its disposal some considerably powerful assets. Its diplomatic efforts aim at imposing a vision of
the future in the Maghreb Arab region, not to speak of preserving its proper interests there. Following the favorable echoes given rise to by the Moroccan proposal at the international plane, 108 French deputies reiterated the position of the former Personal Envoy of the UN Secretary-General, M. Peter Van Walsum, who described as unrealistic the independence of the Sahara.

In view of its geographical proximity, as well as its cultural affinities with its neighbors of the South, Spain has, in turn, played, and could still do so in the future, a key role in the settlement of the Sahara dispute.

Among the partisans in Spain of the Moroccan point of view, the former Prime Minister, Phillipe Gonzales and several other personalities, who estimate that the security of their country is intimately linked with stability in Morocco. For this reason, Spain, in their opinion, must not support the Polisario; such a support will only favor acts of terrorism and fundamentalism, acts that run the risk of directly striking this country, as was the case during the bomb attacks of 11 March 2004 in Madrid.

Let us keep in mind that if Spain should support the Polisario, it will indirectly encourage the claims made by the nationalist separatists on its territory, the Basque region or Catalonia being cases in point. Knowing that a self-determination Project was already proposed in 2004 in the Basque province by Juan José Ibarishi, the Spaniards are fully aware of this reality.

One readily understands then why the Polisario stages hostile campaigns against Spain, akin to those launched against José Luis
Rodríguez Zapatero, affirming therein that this country ought to stay clear of the conflict. The Polisario, supported by Algeria, tried to put pressure on Madrid through the different visits by Mohammed Abdelaziz, with a view to establishing via the media, relations with the Spanish public opinion. This manoeuvre is in keeping with the position taken by the Spanish military institution which has always dreamt of sealing its sovereignty over a part of Moroccan territory by weakening the Kingdom, and considering it as an enemy State that threatens its presence as well as its economic interests in the region.

In turn, the European Union (EU) shares the position of the Kingdom concerning the follow-up to be given to the process of negotiation around the Sahara affair. However, at a time when Morocco shows evidence of realism and a spirit of compromise, the Polisario does nothing but paralyze the process. The EU considers that a return to the situation prior to the adoption of resolution 1754 would constitute a major setback in the perspective to settle this conflict. Embracing as its own the call contained in the Security Council resolution 1813 of 30 April 2008 for the launch of substantial negotiations, the EU exhorted the parties to the conflict to demonstrate proof of realism and flexibility.

Several other countries have voiced, at more than one point, their positions in connection with the Sahara question. In this respect, some countries such as Turkey, Macedonia, Albania or Ukraine all support the Moroccan proposal, along with the efforts deployed by the United Nations to resolve this problem. Thus the UN resolutions 1754, 1783 and 1813 on the Sahara constitute truly courageous steps forward for the peace process, an approach that did not leave...
the African States any indifferent. Indeed, the Senegalese President Abdoulaye Wade, the Burkinabé Blaise Compaoré and the President of the Comoros Islands, Ahmed Abdallah Mohamed Sambi, have all reiterated their support for the Moroccan proposal.

Thus, the Moroccan Initiative for an autonomy Project in the Sahara region, which is understood to be as the unique alternative to the current impasse, has engendered a vast movement of international support. The Sahara problem, a conflict that has lasted for upwards of three decades now, constitutes a stumbling block on the way to the construction of a unified Maghreb.

CONCLUSION

The Moroccan autonomy Project is an asset at the disposal of Morocco. The Moroccan Initiative seeks to allow all the Sahrawis to manage their own affairs. It also offers a chance for peace, as well as promising perspectives for a better future for all the countries of the Maghreb.

The positive and strongest signal has come from the great powers, notably from the United States, France and Spain, all of which have affirmed that the Sahara dispute constitutes a hotbed of permanent tensions in the sub-region of the Maghreb, as well as in North Africa. The autonomy Project offers a real and modern alternative for the definitive settlement of the Sahara question. In contrast, the self-determination leading to independence constitutes a major setback in the perspective of a settlement of the conflict, not to mention the fact that it would strengthen the sources of discord.
The principal reason which has led to the current impasse is the fact that the Polisario still holds on to the right to self-determination leading to independence. Moreover, such a type of self-determination is incompatible with international legality and only the Moroccan autonomy Project is able to offer the Sahrawi populations a better future. The Polisario is thus the part that stalls the negotiations leading to a definitive solution within the framework of international legality, as well as the pertinent proposals made by the UN in this direction.

One could definitively say that the Kingdom of Morocco has been registered within a positive dynamic. It has sought to arrive at a definitive solution to this dispute which constitutes the last vestige of the Cold War, and which represents an obstacle to Maghrebi complementarity. In consequence, the partisans of peace and democracy have to exert their pressure on the Polisario as well as on Algeria in order to prompt them into responding to the call of reason. This is because the Moroccan autonomy Project, which stems from an innovative approach that is founded upon democratic political dialogue and the participation of the populations themselves, is in a position to guarantee the Sahrawi populations the running of their own affairs, in conformity with the cultural and social specificities of the region.
THE MOROCCAN AUTONOMY PROJECT
BETWEEN INTERNATIONAL LEGALITY AND
POLITICAL REALISM

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INTRODUCTION

International legality and political realism do not make part of one insoluble equation; the two terms complement each other, they overlap, in an international context marked by the osmosis of spheres and fields, where interests intersect, and disciplines meet. One thus speaks of common interests, shared ones, wherein visions crossbreed, of dialogue, of cross-cultural space and interdisciplinarity, for beyond that which divides, one seeks that which brings things closer together, what lays the ground for a common thread, a melting-pot, a common heritage of humanity. A monist vision such as this one is not exclusive, neither is it reductive. It is rather unifying and aggregative. In fact, it goes beyond a sheer Manichean conception, substituting the monist vision with a Kantian transcendental philosophy, one that is founded on the will
to reach towards the beyond, towards the universal, as well as towards perpetual peace\(^1\).

Traditionally, one has a tendency to oppose legality to realism, and likewise morality to politics, law to fact, theory to practice, form to content. Yet, in reality, the fact is that it is not a matter of conceiving of these notions in a dichotomous manner, but of disengaging intersections and connections therefrom. As in philosophy, between materialism and idealism, there lies phenomenology, just like in geometry or in music: between two opposite points, there are median zones, and in musical parlance, between the major and minor keys, there is the sharp key note.

This same conciliatory line of reasoning could be transposed at the level of international law as well as international relations. Indeed, in the theory of international law and international relations, one does not find two visions of the world only, but several international conceptions, such as voluntarist, positivist, idealist, objectivist, realistic, constructivist, etc. In this sense, Gérard Dussouy notes that “every narrative has a color, just like every theory has a horizon which contextualizes the two and which a priori specifies their limits as results from the subjectivity of their authors”\(^2\).

Lurking behind many a truth admitted to be scientific, there exists a backcloth, an unsaid, or thémata, to use Gérald Holton’s formula. “Thémata - writes Pierre Favre - are at the heart of the opposition holding between the advocates of atomism and those of holism, or


between the advocates of reflection in terms of invariance, and those who think in terms of evolution or involution. Still more, thèmes oppose those that are especially sensitive to order in the world, to homogeneity, to symmetry, and those that rather perceive disorder, chaos, and randomness.”

Indeed, States do not always agree on the meaning to be attributed to even a similar principle or to the self-same legal text. It could be a matter of divergences stemming from differing perceptions of the self-same reality. Constructivism teaches us otherwise that every which social reality is a construction.

Needless to say anything about the complexity and the richness of human reality, and needless also to say, in the present time, anything about the difficulty of adopting clear-cut positions, in these times of the cacophony of interests, and the multiplicity of perceptions. A sole reality, but different and intersecting perceptions, translating as they do the complexity of human reality as well as cultural relativism: there is no absolute, and truths are multiple. In the Pensées by Blaise Pascal, one reads: “Pleasing justice, a river bound! A truth on the side of the Pyrénées, an error beyond”.

The Sahara conflict responded to the schema of the irreconcilables, of the zero sum game: independence or integration. However, since Morocco proposed the Moroccan Autonomy Project, a reasonable thoroughfare seems to loom in the offing, for deep down the

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Moroccan Autonomy Project has been formulated on the grounds of a major concession on the part of Morocco. A dynamic motivated by the transcendence of a conflict-ridden spiral, of binary logic, saw the light of day. In fact, this Project constitutes a median exit between two extreme solutions, independence or integration. Its strength resides then in its capacity to incarnate both of these solutions, which precisely makes of it a realistic solution to a conflict that has only been dragging on, stalling the integrating potential of North Africa. The Moroccan Autonomy Project expresses thus two fundamental exigencies: international legality and political realism. The present contribution will seek to demonstrate these by situating the subject within a double perspective, one that is dictated by the nature of the problematic in question. It is not our point to establish any hierarchy between two principles, legality and realism or legitimacy, but to show that the Moroccan proposal, in view of its adaptability and its moderation, responds to this two-fold exigency, to these two imperatives. It is precisely this inclusive capacity of the proposal that earned it the merit of being qualified by the Organization of the Security Council of the United Nations (UN) in April 2007 as credible and serious.

I. THE MOROCCAN AUTONOMY PROJECT: AN EXPRESSION OF INTERNATIONAL LEGALITY

Whatever the definition that we could give to international legality, the latter would in no way ignore a key element that constitutes the very foundation of international order: sovereignty. It is no fortuity that the Moroccan Autonomy Project should, in its Point 2, straightaway recall this fundamental exigency. It clearly highlights up to Point 27 its conformity with international legality: “The
Region’s autonomy statute shall be the subject of negotiations and shall be submitted to the populations concerned in a free referendum. This referendum will constitute a free exercise, by these populations, of their right to self-determination, as per the provisions of international legality, the Charter of the United Nations and the resolutions of the General Assembly and the Security Council”.

International legality is a flexible as well as an extensible concept. It cannot be scaled down to mere formal texts, but is also the product of material sources, a “direct translation(s) of international structures and dominant ideologies”\(^5\). The formal sources with which international legality falls into line, are the “simple technical procedures”\(^6\).

A. THE CONFORMITY OF THE MOROCCAN AUTONOMY PROJECT WITH INTERNATIONAL LAW

It would amount to a tautology to recall here the conformity of the Moroccan Autonomy Project with international law in its broadest sense. In essence, beyond its aspect as a regulator of international relations\(^7\), international law is “the expression of the rapports of force and convergences of interest between States”\(^8\).

\(^6\) Ibid.

\(^7\) The Lotus affair (1927), Permanent Court of International Justice: “to reduce the anarchy underpinning international relations by securing coexistence between States and satisfying common interests”.

Point 11 of this Initiative stipulates that: “*The Moroccan autonomy project draws inspiration from the relevant proposals of the United Nations Organization, and from the constitutional provisions in force in countries that are geographically and culturally close to Morocco. It is based on internationally recognized norms and standards*. Such an affirmation readily demonstrates that the Moroccan Autonomy Project is founded upon conventional and customary law.

As concerns international jurisprudence, it would be worthwhile to recall that the Advisory Opinion rendered by the International Court of Justice on 16 October 1975 relative to Western Sahara, underlined the legal ties existing between the Sahrawi tribes and the Sultans of Morocco prior to the occupation by Spain of the Western Sahara in 1884. Likewise, the Moroccan Autonomy Project responds to general principles of law such as equity, the principle of equilibrium, as well as the principle of acquired advantages. In addition, its elasticity allows it to accommodate several elements in such a way as to guarantee a greater efficiency of the autonomy that it proclaims, as well as the internal self-determination that it allows for.

A chameleon principle, self-determination takes up in effect diverse forms, in addition to the fact that the notion of “people” to which it is supposed to refer is imprecise, the conceptions concerning it being themselves numerous. Aureliu Cristescu, the UN reporter rightly points out *apropos* of the notion of people that one has oftentimes “expressed doubts on the possibility or even the opportunity of giving a definition that would be both universally
The right to self-determination is not then mixed up with the right to independence. The UN practice on matters of decolonization is characterized by “a greater margin of appreciation of the demographic, historical and political conditions of each specific case, which results in a diversity of the modalities and techniques of self-determination”10.

At the level of international standards in the area of autonomy, the Moroccan Autonomy Project draws inspiration from several international experiences that have stood the test of time in countries such as Spain, Italy, Belgium and Canada. It is then in tune with the most advanced nations on matters of democracy. This is precisely why it opens up onto promising perspectives11.

**B. THE MOROCCAN AUTONOMY PROJECT: A FORM OF SELF-DETERMINATION**

The international juridical doctrine relative to self-determination has witnessed some notable evolution, notably following the fall of

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11 “This Initiative is part of the endeavors made to build a modern, democratic society, based on the rule of law, collective and individual freedoms, and economic and social development. As such, it brings hope for a better future for the region’s populations, puts an end to separation and exile, and promotes reconciliation” (Point 3 of the Moroccan Autonomy Project).
the Berlin Wall, and the disintegration of the ex-Union of Socialist Soviet Republics (USSR). The emergence in Europe of numerous States from the dislocation of former multinational States brought in the risk of balkanizing the European map, all the risks pertaining thereto included.

Outside the situations of decolonization, there exists no right to secession that is recognized as such by international law. There exists, on the other hand, a form of self-determination that, while securing the concerned populations the right to exercise their civil, political, economic, social and cultural freedoms, allows for the preservation of the national unity and territorial integrity of the States that recognize it. There exists thus no incompatibility between self-determination, such as it is stated in the UN Charter, as well as in the hereto pertinent international texts, and internal autonomy. The Moroccan Autonomy Project emphasizes in its Point 8 that, should the negotiations lead to a consensual result around the Moroccan proposal, that “(...) shall be submitted to the populations concerned for a referendum, in keeping with the principle of self-determination and with the provisions of the UN Charter”.

Also, the Project guarantees the concerned populations, in accord with Point 3, the exercise of Human rights such as they are universally recognized. It reaches then towards a system wherein democracy, as well as fundamental freedoms and rights are secured. Likewise, it subsumes the spirit of self-determination as a technical procedure allowing a determinate human grouping to run, in all freedom, its affairs and attend to their own concerns.
II. THE MOROCCAN AUTONOMY PROJECT AND ITS CONFORMITY WITH A POLITICAL SOLUTION ADVOCATED BY THE SECURITY COUNCIL

As the Moroccan Autonomy Project recalls in its Point 1, ever since 2004, the Security Council has been regularly calling upon “the parties and States of the region to continue to cooperate fully with the United Nations to end the current impasse and to achieve progress towards a political solution”. To show evidence of realism in the negotiations, as is henceforth recommended by the Security Council, means that a strictly juridical approach is not susceptible of culminating in a result that allows for guaranteeing international peace and security.

A. POLITICAL REALISM: A NEW AXIOM FOR THE SETTLEMENT OF THE SAHARA DISPUTE

The referendary solution has proven to be a failure for a long time now, for it is overly reductive of a conflict that is fundamentally political. The “negociatory”, so to speak, path is in a better position to untangle it, preserving thus the interests of everybody, on a consensual base that is now backed up by the international Community. In fact, it was impossible to reach any agreement over the list of voters with a view to a self-determination referendum. As emphatically underlined by the former UN Secretary General in his report on 17 February 2000, “(...) the issue of the establishment of the electorate has been, and may remain, a core problem which could eventually prevent the holding of the referendum as provided...”
by the plan [of settlement by the United Nations]. In its Resolution 1309 of 25 July 2000, the Security Council summoned the parties to “(...) agree upon a mutually acceptable political solution to their dispute (...).”

With such an approach, the Security Council admits of the impossibility of holding onto a juridical solution, resting content therein with applying absolute principles, without taking into account the specificity of the Sahara conflict. The latter is far from being a juridical dispute, but a political conflict, a residue of the Cold War and of ideological bipolarity. Logics such as these are nowhere to be found in a climate of integration, globalization, cooperation and dialogue between peoples and cultures. The Baker Plan I, a framework-agreement on the statute of Western Sahara, is grounded in such a major observation by the Security Council.

Through Resolution 1359, dated 29 June 2001, the Security Council underlined that it “Supports fully the efforts of the Secretary-General to invite all the parties to meet directly or through proximity talks, under the auspices of his Personal Envoy, and encourages the parties to discuss the draft Framework Agreement and to negotiate any specific changes they would like to see in this proposal, as well as to discuss any other proposal for a political solution, which may be put forward by the parties, to arrive at a mutually acceptable agreement”.

The Moroccan Autonomy Project falls within this trajectory. It is consonant with Resolution 1495, dated 31 July 2003, which made note of the inapplicability of the "(...) Peace plan for the self-

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12 UN Secretary General’s report, S/2000/131(§32).
It is no surprise that the Security Council should have qualified, through Resolution 1754, the Moroccan Autonomy Project as being in fact serious and credible. Resolution 1813 of 30 April 2008 has moved in the same direction. On this basis, Morocco has shown evidence of a great flexibility as well as adaptability during the Manhasset negotiations with the Polisario, with a view to sidestepping the current impasse.

In the same vein, the international support that the Moroccan Initiative has pulled in from the great international powers specifically underlines to what extent the Moroccan approach is in conformity with the spirit of the United Nations resolutions. It translates then a realism that would allow for overcoming the current stalemate, and favor the security of the Sahel region as well as Maghrebi integration. In fact, M. Peter Van Walsum, the former personal Envoy of the UN Secretary-General concluded in April 2008 that the independence option was not realistic. Should international legality be, at least formally, be on the side of the Polisario, legitimacy, in turn, was on the side of Morocco. In any case, international legality, if applied in its strictest terms, translates the application of formal principles only; it does not take into account the aspirations of all the Moroccan people, neither does it consider the historical dimension of the Sahara question for Morocco, its geopolitical depth and the undeniable social and cultural ties of the Sahara provinces with the rest of the Kingdom, as well as the economic symbiosis these provinces have with the regions of Morocco. The political argument is here more powerful than the juridical parameter.
And beyond its juridical veil, the Sahara affair constitutes, in truth, a covert political conflict between Morocco and Algeria. William Zartman rightly points out that the Sahara conflict “constitutes the major stake in regional relations, being as at is at the same time a symbol, a pretext, as well as a thorn in the rapports between Morocco and Algeria, for that is the heart of the matter (…)”\(^{13}\).

When Morocco defends its sovereignty and its national unity, it does so not only out of a concern for international legality - the two principles being indeed proclaimed by the United Nations Charter and relevant international texts - but also out of a spirit of realism. The Sahel region is in fact the hotbed of potential dangers that could imperil the security of the neighboring States. In this regard, Morocco is fully in the right to defend its territorial integrity so as to ultimately guard against any eventual threats.

It is clearly established today that weak States cannot constitute a reliable guarantee against potential dangers, notably those that hover over the Sahel region and, in a general manner, North Africa: terrorism, drug trafficking, illegal immigration, organized crime. Within the same spirit, Morocco actively cooperates within the framework of the Community of Sahel-Saharan States. More precisely, during the 17\(^{th}\) session of the executive Council of the Community of Sahel-Saharan States, which was organized in Rabat from 7 to 10 February 2009, Morocco took care to recall the

dangers that lie in wait for the region: separatism, terrorism, extremism and illicit trafficking under its differing guises\textsuperscript{14}.

**B. THE SAHARA QUESTION: THE FERMENT OF THE NATIONAL UNITY OF MOROCCO**

The political legitimacy of Morocco over the Sahara is the affair of all Moroccans, who rally around the throne. Indeed, the representative institutions, the political parties, civil society, and all citizens consider, and are all convinced, that the Sahara has always been, and will always remain so, Moroccan. The Green March constituted a strong point, a national epic where the Moroccan people united around the throne so as to recuperate, in a March that brought together no less than 350 000 persons, women, men and the elderly alike, the territories occupied by Spain, the colonial power. In reality, had there not been the involvement of Algeria in the Sahara conflict, and the variegated support that it lent to the separatists of the Polisario, the conflict would not have existed in the first place, and Morocco would have potentially gained. However, the will manifested by the Algerian military regime to weaken Morocco by way of rivalry and hegemony, ended up by poisoning relations between the two countries, pushing thereby the whole region into military blaze as well as into chaos.

Ever since their peaceful recuperation in 1975 and the signing of the Madrid Accord with Spain the same year, some colossal

investments have been made in the provinces of the South. More important still, some ties have always existed between the populations of the South and the Sultans of Morocco. These juridical ties of allegiance have been highlighted by the Advisory Opinion of the International Court of Justice on 16 October 1975. Arguments such as these are sufficiently forceful to confirm the legitimacy of Morocco in its claim for its territories that were despoiled by the colonizer who, up to the present, still occupies two Moroccan cities: Sebta and Melilia. This is to say how far it would be utopian to apply a formal principle to the Sahara conflict; namely, external self-determination, without taking into account the historico-political weightiness characterizing it.

CONCLUSION

The resolution of the artificial conflict of the Sahara around the Moroccan Autonomy Project, as presented to the Security Council and endorsed by the latter, as well as by the international Community, will allow for putting an end to upwards of 33 years of conflict. It will thus weed out the sources of a potential violence, and will reconcile populations and families. It will confer upon Morocco the possibility to consolidate its cooperation with the neighboring countries of the South, with a view to fighting together all the forms of danger in ambush for the region: terrorism, kidnapping, drug mafias and all forms of trafficking. Morocco will reintegrate then the African Union, and will play an active role to the benefit of the entire continent. It could thus have a preponderant place in the implementation of the Millennium Development Goals (MDGs) in the interest of the least developed African countries. It will equally play an active role in the prevention and settlement of
regional conflicts. It will further participate in maintaining the operations of peace in sub-Saharan countries. It will consolidate its democratic process, complete the construction of the rule of law, and give free vent to its potential for development. It will also deepen its process of stowage into the European Union, and will serve as a catalyst for the construction of the Maghreb. A scenario such as this one, favorable as it is to the entire region of North Africa, is unfortunately torpedoed, as we have already said, by Algeria’s will to maintain the status quo and, by the same gesture, stall the process of Maghrebi integration.

The realism advocated by the Security Council is dictated by a difficult geopolitical context. The imperative of security and the exigency of stability are today the major factors without which no global development would be had. Because of this, the Moroccan Autonomy Project constitutes a point of entry into a geopolitics that lays the foundations for a more stable and more secure order.
THE DISTRIBUTION OF COMPETENCES IN THE AUTONOMY PROJECT FOR THE SAHARA REGION: REALISM AND RELIABILITY

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INTRODUCTION

In order to reach a fair political solution that is sustainable and mutually accepted by the parties concerned with the Sahara conflict, mainly Morocco and the Polisario Front, a Project for Negotiating an Autonomy Statute for the Sahara Region was presented by the Moroccan diplomacy on 11 April 2007 to the Secretary-General of the United Nations (UN), to allow for the self-determination of that region. The Security Council took note of the Moroccan proposal and welcomed the “(...) serious and credible Moroccan efforts to move the process forward towards resolution (...)”, (Resolution 1754 of 30 April 2007). The Moroccan Initiative aims at putting an end to the status quo and moving the conflict out of the deadlock. Motivated by a “spirit of compromise”, Morocco has shown “realism” and has committed itself “in good faith” in a series of negotiations “without preconditions,” responding favorably therefore to the unceasing calls by the international Community upon the belligerent parties (Resolution 1813 of April 30th, 2008). A few months earlier, the King had created an authority, the Royal
Advisory Council for Saharan Affairs (CORCAS), in charge, among other, of following up on the Sahara issue, which remains the top national cause: “(...) the question of the Sahara is the sacred responsibility of all Moroccans (...)” (the Royal speech of 6 November 2008). The fundamental mission of that authority is to assist the King, in particular with all the issues related to defending the territorial unity and the national unity of the Kingdom. Advocating the Moroccan proposal towards the resolution of this conflict through a political solution that is negotiated and accepted by all the parties concerned is the founding reason for CORCAS. Indeed, throughout its participation in the different rounds of negotiation under the auspices of the UN, CORCAS, in the person of its President, has kept highlighting the benefits of the Moroccan Project of Autonomy. The Council has called upon the Polisario leadership to give precedence to the logic of reason and history by returning to Morocco and adopting the autonomy Initiative as a unique, realistic and feasible solution, and one which establishes rights, dignity, reconciliation and reunification. The members of CORCAS seize every opportunity, such as the case during the Session organized in Smara on 17 and 18 December 2007, to reaffirm their pride for having fully contributed to the preparation of the Moroccan Initiative of autonomy and having vigilantly accompanied it every step of the way, as a solution that preserves the sovereignty and territorial unity of the Kingdom, respects the specificities of the populations of the Southern provinces, as well as takes into account international criteria as far as autonomy, in addition to being very much concerned with putting an end to the deadlock of the Sahara issue, after the international Community realized the inapplicability of all the previous outdated plans.
The Autonomy Project in the Sahara region is undoubtedly a final, fair and global solution because it meets the specificities of the provinces of the South, hopes and expectations of their inhabitants and is in conformity with regional and international standards of regional autonomy. Also, the Moroccan Initiative is one of the most advanced forms of the self-determination of peoples, along with the respect for the principle of the sovereignty and territorial unity of the Nation, as provided for by the United Nations Charter. The Project is a judicious and well-considered political choice, motivated as it is by the concern to definitely resolve the dispute over the Sahara by putting an end to the ordeal of tens of thousands of people held captive against their will in the Polisario prisons. It mainly draws inspiration from “(...) the relevant proposals of the United Nations Organization, and from the constitutional provisions in force in countries that are geographically and culturally close to Morocco (...).” It also refers to the international norms and standards in the field (Point 11 of the Project). This multi-layered source of inspiration is an additional proof of the originality of the Moroccan proposal. Indeed, the Constitutions of several European countries that have adopted enlarged regionalization or autonomy policies have cross references with the Moroccan Project, as shown through the contents of the Constitutions of Italy (1947), of Spain (1978), of Belgium (1994) and of Portugal (1976).

The Autonomy Project has been made easy thanks to the progressive evolution witnessed by Morocco, the unifying State, in local democracy initiated several decades ago. Just after Independence, the State opted for a centralization policy, but such a choice has proven to be purely theoretical and seemed practically
unfeasible since it did not represent an ideal, which accounts for the move towards decentralization and a recent resolutely decentralizing legislation. Illustrative here is the Local Authorities Charter\textsuperscript{25} which has been substantially adjusted. Today, a review project is under discussion at the Parliament with a view to further deepening democracy locally. Then, the Constitutional revision of 1992, confirmed by that of 1996, erected the region in local authorities (Article 100), governed by Law n° 47-96 of 2 April 1997\textsuperscript{26}. To these must be added the strengthening of the decentralizing policy.

This dynamism has taken a larger scale with the Royal announcement of 6 November 2008 regarding advanced regionalization: “(...) I have therefore decided to turn over a new leaf in the ongoing reforms I am spearheading. Indeed, we shall soon be launching a gradual, sophisticated process of regionalization which will cover all parts of the Kingdom, especially the Moroccan Sahara region. I am keen to enable all the inhabitants and sons of the Moroccan Sahara to run their local affairs democratically, within a unified Moroccan nation, either through the implementation of an appropriate, broad-based regionalization system - which will reflect the will of the nation - or through the proposed autonomy statute, once a UN-sponsored consensual political agreement is reached as a final solution to this


\textsuperscript{26} Dahir n° 1-97-84 of 2 April 1997 relative to the promulgation of Law n°47-96 on the organization of the region, Official Bulletin, n°4470, of 3 April 1997, p. 292.
dispute (...). The proposed reform should “(...) be based on unity, balance and solidarity (...)”.

With the Autonomy proposal, new perspectives for development are emerging. They are beneficial to the Sahara Region as well as to the whole of Morocco. The reliability and credibility of the autonomy Project are measured up by the realism shown in the distribution of competences in the Autonomous Region of the Sahara and the central government. In other words, autonomy is measured up, on the one hand, by the manner in which the Region’s officials are appointed and, on the other, by the scope of their judicial powers, as well as by the means, material and financial more particularly, that they have at their disposal. The project proposed by Morocco sets up a balanced distribution of powers (I) in which the democratic exercise is entrusted with autonomous authorities (II). These are the two aspects that are closely linked to democracy in its regional dimension.

I. THE DISTRIBUTION OF COMPETENCES BETWEEN THE SAHARA REGION AND THE CENTRAL GOVERNMENT

The distribution of powers is at the same time a sensitive and delicate issue in every policy of regionalization, since the central government has to transfer to the regional authorities a whole list of competences that they exercise in total independence. Sometimes, negotiations may fail due to the rigid positions or conceptions of one of the parties. Aware of the crucial importance of this issue and of its eventual ramifications on the negotiations, Moroccan officials, inspired by a spirit of openness, have prepared a realistic and feasible project that comprises a fair and equitable distribution.
There is a need to state the competences of the Sahara Region (A) and the prerogatives of the central government (B).

A. THE COMPETENCES OF THE SAHARA REGION

Several types of distribution of competences are practiced by several systems of regionalization or of autonomy. In fact, the Constitution most often states the prerogatives assigned to the central government, the other points being left to the autonomous region. Sometimes, on the contrary, the Constitution draws up the list of the competences assigned to the region, the central government being able to freely intervene in the other fields. Since the Moroccan Project is at the phase of negotiations, and in order to avoid conflicts of competence, the adopted technique consists of clearly determining the competences assigned to the Sahara Region (1) along with anticipating the financial means for their implementation (2).

1. THE DOMAINS OF INTERVENTION OF THE SAHARA REGION

The idea of autonomy makes no sense if the central government intervenes in all the fields of the life of the local authority. Thus, the recognition of some competences, more or less large, is the starting point in any policy of regionalization. Guided by the foreign experiences in force, the Moroccan Project of autonomy has opted for clarity in defining the competences of the Sahara Region. Point 12 of the Project draws up a list of the various competences that cover all the public activities and services necessary to the survival of the local authority. Undoubtedly, administrative services are leading the competences of the Sahara Region and are consolidating
its functional autonomy. On the one hand, the Project makes provision for a local administration to run the population’s affairs, and a local police force to watch over public order and finally jurisdictions created especially for the Region, on the other. Besides administrative services, the region needs other sectors related to the economic field. In this respect, the Region has at its disposal competences of utmost importance to guarantee a sustainable economic development. To reach that end, the authorities of the Region are authorized to adopt medium or long-term programs, to take appropriate measures for the regional planning and to encourage investments. Other actions are necessary to promote trade, industry, tourism and agriculture. In short, all the means that are necessary for the blooming of the Region are transferred to the competent regional authorities.

The autonomy Project endows the Sahara Region with a responsibility to create public services and to cater to their good running. It is worth mentioning that these services are the *raison d’être* of the administration that has prerogatives of public power only to better ensure them. At the same time, the administration has certain legitimacy only insofar as its activities are of a public service nature. From now on, the authorities of the Region will be tasked with the provision of services, which allows for supplying goods and services to the members of the local authority: distribution of water and electricity, hydraulic facilities, transportation of people and of goods, as well as civil engineering. In the social field, several competences are provided for by the Project in order to secure a decent life for the concerned population. The basic needs to lead a decent and peaceful life are housing, education, healthcare, employment, sport as well as social security
and protection. It is worth mentioning that the Moroccan central government has registered, over the years, remarkable progress in these vital fields, from which the future authorities of the Region of the Sahara can benefit. Given the cultural specificity of the Region, the Project has entrusted cultural policy with the Region’s authorities, which will work to promote and preserve the Sahrawi Hassani cultural heritage within the framework of the nationally unified and diversely rich identity. That sector is nowadays entrusted with CORCA, which has created an ad hoc commission in charge of the promotion of Hassani culture. Finally, the environmental aspect comes, in turn, under the competence of the Region. Consequently, “(...) In all cases, we could say that the creation of regional administrations and public services will go hand in hand with the disappearance of the present regional services offered by the State and will, by the same gesture, release material, financial, and eventually, human means that would allow for the setting in motion of the new regional administration. The subsequent organization of these public services in the different sectors of activity will obviously fall within the competence of the regional authorities. This, however, leaves intact the possibility that the State has for transferring to the region, and without delay, the prerogatives that it currently holds.” A mere comparison of Law 47-96 on the organization of the region with the autonomy Project allows one to say that the competences transferred to the authorities

of the Sahara Region are more important from a qualitative and quantitative perspective. The same applies to the financial means.

2. THE APPROPRIATE FINANCIAL RESOURCES

The development of the Region in general and the economic development in particular depend on the availability of the resulting financial resources. In other words, any policy of regionalization or of autonomy lacking financial means is doomed to failure. The distribution of competences between the central government and the Sahara Region, as described above, implies in a quasi mechanical way the reorganization of appropriate financial means. Point 13 of the Project stresses the fundamental nature of the resources in the following words: “The Sahara autonomous Region will have the financial resources required for its development in all areas (…)”. The same point explicitly makes provision for the different resources allocated to the Sahara Region. We may distinguish three types of resources. First, resources peculiar to the Region, made up mainly of “(...) taxes, duties and regional levies enacted by the Region’s competent authorities (…)”, of “(...) proceeds from the exploitation of natural resources allocated to the Region (…)” and “(...) [of] proceeds from the Region’s assets”. Also, shared resources such as “(...) the share of proceeds collected by the State from the exploitation of natural resources located in the Region”. Finally, external State resources. They are “(...) allocated in keeping with the principle of national solidarity (…)”. Point 13 is

not at all a clause of style, but surely an article that has serious consequences, considering the responsibilities assumed by the authorities of the Region in developing this territory of the Kingdom. The autonomy status granted to the Region of the Sahara, however important it is, should not be synonymous with independence or rupture with the mother land. In fact, the simultaneous transfer of financial means in the form of basic subsidies, necessary for the exercise of regional competences, aims at reinforcing and consolidating the bonds of national solidarity. Regional development in all these dimensions is inevitably in need of the valuable contribution of the State, especially when the Region’s financial resources are limited or are lacking. The central government may, upon the request of the regional authorities or without consultation, bring its financial contribution to cover budget deficits or to implement programs and projects already planned for. This assistance shall be in no way a case of guardianship practiced by the central government on the Region. On the contrary, it is a source of richness for the regional budget.

B. THE PREROGATIVES OF THE CENTRAL GOVERNMENT

The autonomy statute granted to the Provinces of the South does not relieve the central government of its traditional functions in connection with national sovereignty. Certainly, should the Region, according to the autonomy Project, benefit from large powers to independently run regional affairs and should this political autonomy largely overflow the technique of administrative decentralization, on cannot but notice that the State has not given up exercising its prerogatives in relation to sovereignty (1) even
concerning foreign relations, consulting the regional authorities remains a possible option (2).

1. THE ATTRIBUTES OF SOVEREIGNTY

The Moroccan autonomy Project confers upon the State exclusives competences in the Royal fields, as shown by Points 6 and 14. Both functional and institutional autonomy as conceived of by the Project does not undermine the sacrosanct principles of the Nation. In fact, the Constitutional statute of the Head of State is not in equation. Constitutional and religious attributes of the King remain unchanged. In other words, Article 19, the keystone of the Moroccan political system and the hard nucleus of the Constitution preserves all its substance. The autonomy statute granted to the Region of the Sahara shall coexist with the principle of national unity incarnated by the King Article 19 is clear in this regard: “The King, "Amir Al-Muminin" (Commander of the Faithful), shall be the Supreme Representative of the Nation and the Symbol of the unity thereof. He shall be the guarantor of the perpetuation and the continuity of the State. As Defender of the Faith, He shall ensure the respect for the Constitution. He shall be the Protector of the rights and liberties of the citizens, social groups and organizations. The King shall be the guarantor of the independence of the Nation and the territorial integrity of the Kingdom within all its rightful boundaries”. Likewise, that autonomy has no impact on the competences of the King as they are provided for in the Constitution. He will continue to exercise them over the whole national territory. It should be noted here that the main Royal prerogatives are: the appointment of the Prime minister and of the members of the government upon the latter’s proposal, the
promulgation of law, the appointment at civil and military positions, the presidency of several Councils (the High Council of Magistracy, the High Council of Education, and the High Council of National Promotion and Planning), the proclamation of state of emergency, the declaration of state of siege, the revision of the Constitution, not to mention his relations with the different authorities of the State (the Parliament, the Government and the judicial Authority)²⁹.

In parallel, an exclusive competence is recognized for the State in the fields that are closely linked to the competences of sovereignty; namely, the flag, the national anthem and the currency. These are the symbols of the State. The autonomy Project transfers to the State an integral competence concerning national security, external defense and territorial integrity. Actually, it is a responsibility assumed by the Head of State in any constitutional system. The Moroccan Constitution entrusts this task unequivocally with the King insofar as he “(...) shall be the Commander-in-chief of the Royal Armed Forces (...)” (Article 30). He is required, according to the Constitution, to watch over the internal and external security of the Kingdom. Any act of aggression whatsoever must be repelled. Likewise, the Sahara Region must benefit, just as any other part of the national territory, from protection against external aggressions as well as internal acts of chaos. It is obvious that the central power owns important means to maintain the security and the stability of the State.

²⁹ See respectively articles : 24, 26, 30, 32, 35, 49 and 103 of the Moroccan Constitution of 1996.
Finally, the jurisdictional order of the Kingdom falls under the prerogatives of the State. According to the Constitution, the King has large powers in the judicial field. He appoints judges, and rulings are issued and executed in his name. The autonomy Project recognizes to the Parliament of the Sahara Region the possibility of creating local jurisdictions in perfect harmony with the national judicial organization. Deficiencies and any eventual incompatibility between the national and regional systems must absolutely be avoided.

2. FOREIGN RELATIONS: A RESERVED DOMAIN

Undoubtedly, Morocco’s foreign policy, both regarding its definition or its implementation, comes under the decision-making power of the King. The fundamental declarations defining the orientations of foreign policy stem from the first actor in the State, the King. This sensitive, vital and complex field is a reserved field that is left to no other actor. According to tradition, the main orientations are given by the Imam who can always call on selected figures intuitus personae. The Constitution confers upon the King important prerogatives related to foreign relations. Unchanged throughout the different versions of the Constitution of Morocco, Article 31 leaves no doubt about this point. The last revision of 13 September 1996 modified it following the establishment of bicameralism: “The King shall accredit ambassadors to foreign nations and international organisations. Ambassadors or representatives of international organisations shall be accredited to him. The King shall sign and ratify treaties. However, treaties committing State finances shall not be ratified without having been approved under the law. Treaties likely to affect the constitutional
provisions shall be approved in accordance with the procedures prescribed for the modification of the Constitution”.

It transpires from the above that the King directs, manages and issues his directives to the Government depending on what he considers right and beneficial to the whole Nation. The executive is increasingly being weakened and disarmed before of a Royal power deciding on all the issues that seem particularly important for the destiny and the prestige of the State. The tasks entrusted with the King are so important that, in order to be well assumed, they need interventions in all the aspects of national policy and cannot be confined to specific spheres. Foreign policy is fundamental, vital and indissociable thrust of any policy. In this sense, we should read Paragraph 4 of Point 14 of the autonomy Project that keeps the State with an exclusive competence in terms of foreign relations. The Moroccan proposal is in tune with practically all the foreign experiences in the field of regionalization or of autonomy. It considers that foreign policy must be at the heart of the general policy of the central government which seeks to increase its capacities of influence beyond the national territory. This reserved field undergoes exceptions that are due to several factors. The autonomy Project is an eloquent example. Point 15 states the following: “State responsibilities with respect to external relations shall be exercised in consultation with the Sahara autonomous Region for those matters which have a direct bearing on the prerogatives of the Region. The Sahara autonomous Region may, in consultation with the Government, establish cooperation relations with foreign Regions to foster inter-regional dialogue and cooperation”. The content of this point falls within the logic of the compromise, the consensus and the realism that underscore the
Moroccan Project. Important decisions in foreign relations pertaining to the Sahara Region will be subject of an enlarged consultation with the authorities of the Region. This spirit of openness on the part of the central government can only consolidate the existing bonds between the population of the Region and the decision makers at the Capital. Likewise, the autonomy Project encourages all the initiatives stemming from the leaders of the Region with a view to building up cooperation and partnership bonds with other foreign regions. The role entrusted with the central government remains undoubtedly to supervise, to accompany and to promote any decentralized cooperation.

Finally, Point 17 of the Project stipulates that “Moreover, powers which are not specifically entrusted to a given party shall be exercised by common agreement, on the basis of the principle of subsidiarity”. It is true that the Project cannot pretend to be comprehensive as regards the distribution of all the competences in that there are fields that may surface up in the future, and to which the principle of subsidiarity should be applied.

II. EXERCISING THE COMPETENCES OF THE SAHARA REGION

The Moroccan Project recognizes to the Sahara Region a functional autonomy through the establishment of specific fields of intervention in order to meet, through its own decisions and its own agents, the common needs of the Region’s population. These competences are democratically exercised through autonomous authorities at the administrative and financial levels (A). This autonomous and democratic management does not override the strong bonds with the central government (B).
A. THE AUTHORITIES OF THE REGION OF THE SAHARA

Functional autonomy and organic or institutional autonomy are the two necessary conditions in any policy of constitutional regionalization. The assigned competences must be implemented through independent authorities. Traditionally, there are three powers that accomplish the three fundamental tasks of the State: the legislative (1), the executive (2) and the judiciary (3) powers.

1. THE LEGISLATIVE POWER

The first manifestation of a voluntary policy of autonomy is to plan for the creation of a legislative authority that has exclusive competences. This will allow for laying down rules of a general range that organize life in society. Going beyond mere recognition, the Moroccan Project addresses the composition of the Parliament of the Sahara Region. In fact, Point 19 mentions that this authority “(...) shall be made up of members elected by the various Sahrawi tribes, and of members elected by direct universal suffrage, by the Region’s population. There shall be adequate representation of women in the Parliament of the Sahara autonomous Region”. This point is full of teachings. The Project insists on a unique and exclusive means of appointing the future members of the Parliament-- vote. The population of the Region is called on to choose freely and in all transparency, in honest elections, their representatives. Undoubtedly, elections are the democratic voice in choosing the elected members. This choice should be carried out at two times, since some members will be chosen by direct universal suffrage and, in parallel, the tribes of the Region shall elect their representatives at the regional Parliament. This technique will allow
for setting up a balance between the different tribes that make up Sahrawi society. Though the text of the Project remains silent about the number of people to be elected by each tribe, it will take into account the principle of proportionality. However, all the tribes will be represented at the Parliament of the Region and will contribute to its development. Moreover, the Sahrawi woman will have her seat at the Parliament. The central government may, upon the wish of the regional authorities, the national experience based on quotas. The gender-based approach is nowadays part of the principles of organization and functioning of the authorities of the Region.

2. THE EXECUTIVE POWER

The Region of the Sahara will have an executive power which “(...) shall lie with a Head of Government, to be elected by the regional Parliament. He shall be invested by the King (...)” (Point 20 of the Project). The autonomy Project respects the democratic principle in the choice of the Head of the executive. In fact, the regional Parliament is the only empowered authority to choose the first official of the Region. The modalities of this operation are revealed in the Project. In all cases, the parties may, for that purpose, draw inspiration from foreign experiences in this field. The choice of a

30 In order to entrust the woman with an active role in the national political life, the Government has taken a transitional measure during the review of the organic law of the Chamber of representatives by adopting quotas. In fact, a quota of 10% in the form of a national list has been granted to women in the legislative elections of September 2002. The representation of women at the Parliament has moved from 0.6% at the elections of 14 November 1997 to 10.8 at the elections of 27 September 2002. In the last elections of 7 September 2007, there was a slight decrease (34 seats out of 325).
specific personality by the regional Parliament requires the intervention of the Royal power to crown the nomination process. That is the act of investiture. One should keep in mind the idea that the Sahara Region is an integral part of the Moroccan territory benefiting from autonomy within the framework of national unity. The appointment of the Head of Government of the Sahara Region does not harm the autonomy statute. Paragraph 2 of Point 20 emphatically notes the close links between regionalization in its political form and national sovereignty: “(...) The Head of Government shall be the representative of the State in the Region”. To efficiently execute his tasks, he “(...) shall form the Region’s cabinet and appoint the administrators needed to exercise the powers devolving upon him, under the present autonomy statute (...”)”. Likewise, an executive power, in charge of implementing laws, is in need of sizeable means to meet its obligations. For that purpose, it will have the administration and the necessary staff for the accomplishment of its functions. Besides, the Head of Government of the Sahara Region “(...) shall be answerable to the Region’s Parliament” (Point 21 of the Project). This responsibility that is common between all the contemporary political regimes is easily explained by the importance and the impact of the decisions made.

3. THE JUDICIAL POWER

The third power provided for by the autonomy Project is the judicial power. Courts may be created “(...) to give rulings on disputes arising from enforcement of norms enacted by the competent bodies of the Sahara autonomous Region” (Point 22 of the Project). This creation concerns the field of law, which is the competence of the
Parliament of the Region. Issuing the judgments must be governed by two main principles. First, the courts that are called on to issue rulings must be independent to guarantee fair cases. Second, these rulings should be issued in the name of the King just like in all the courts of the Kingdom. At another level, the autonomy project sets the double degree of jurisdictions; which constitutes an additional guarantee for the parties in court. “As the highest jurisdiction of the Sahara autonomous Region (...)” is in charge of giving right by rendering “(...) give final decisions regarding the interpretation of the Region’s Legislation (...)” (Point 23 of the Moroccan Project).

The intervention of this tribunal should, as precious as it may be, not overlap with the competences recognized, through constitutional and legislative texts, to the Constitutional Council and to the Supreme Court, each in its proper domain. In fact, the recognition to the Sahara Region of the power to set up local courts is a considerable progress towards allowing individuals to reach an independent and geographically close judge. This proximity should be beneficial to the parties without resulting in a separation from other central courts. All foreign experiences in terms of regionalization or autonomy have introduced a mechanism allowing the local population to refer their cases to the different courts of the Region while keeping a strong link with the centre. “(...) If it is in the interest of a genuine justice and its proximity to the parties that the judgments be rendered at the local level, it is not less important that their submission to a supreme court remains necessary for a general standardization over the whole national territory (...)”\(^{31}\).

The Moroccan proposal is therefore in conformity with the international standards in this regard. What about the links between the centre and the Sahara Region?

B. THE LINKS BETWEEN THE SAHARA REGION AND THE CENTRAL GOVERNMENT

As an integral part of the national territory, the Region of the South, the subject of the Moroccan Initiative of autonomy remains faithful and attached to national integrity. The autonomy statute proposed by Morocco protects and guarantees the local specificities. These specificities do not break off the links between the Provinces of the South and the mother land. The population of that Region actively takes part in the management of public affairs, as well as in the decision-making process at the central level (1). In parallel, the central government has very close links with the Sahara Region (2).

I. THE PRINCIPLE OF PARTICIPATION

The recognition of an autonomy statute to the Region of the Sahara has been illustrated by a transfer of several important competences to the authorities of the Region, exercised at first by the central government. The Moroccan project not only redistributes the competences for a genuine autonomy for the Sahara Provinces, but also ensures the effective participation of the population in the bodies of the central power. In this regard, Point 18 is clear: “The populations of the Sahara Autonomous Region shall be represented in Parliament and in the other national institutions. They shall take part in all national elections”. It is a strong and irreversible commitment of the State to have the populations of the Sahara
Region benefit from all the rights and advantages recognized to all Moroccans. The Sahrawis, just like their fellow Moroccan citizens, are equitably treated at different levels. First, the autonomy project guarantees to the populations of the South their representation at the national Parliament, which is bicameral. Just like any part of the Kingdom, inhabitants of the Sahara Region shall appoint at regular and transparent elections, their deputies and counsellors who will act as a linking ring between their Region and the central government. They will transmit the concerns, aspirations and expectations of the Sahrawi populations, which will allow the Region to be represented by its own representatives. Then, the presence of the Sahara Region on the national political stage is also carried out through representation. In fact, the different authorities and institutions created by the central government keep a seat for the populations of the South, such as the High Council of the Magistrate, the High Council of Education, the High Council of National Promotion and Planning, the Economic and Social Council, the Constitutional Council and the Council of Accounts.

The same principle applies to such authorities as the Advisory Council of Human Rights, the Council of the Moroccan Community Abroad, and the Royal Institute of the Amazigh Culture. It is particularly a question of legislative elections and referendum operations, whereas the Region, according the autonomy statute, holds its own elections. To sum up, the inhabitants of the Sahara Region will run their regional affairs in an autonomous manner and will participate in the decision-making process at the central level.
2. THE COORDINATION REQUIREMENTS

Enlarged regionalization or autonomy does not mean independence or rupture. The Moroccan Project of autonomy fights for national unity and territorial integrity. In a concern for efficiency, coherence and coordination, the central government keeps tight bonds with the Sahara Region. Point 16 of the Project states “The powers of the State in the Sahara autonomous Region, as stipulated in paragraph 13 above, shall be exercised by a Representative of the Government”. If the State has guaranteed to the populations of the Sahara their representation in the different state institutions and their active and effective participation at the national election consultations, the Sahara Region must accept the intervention of the central government through the government deputy in order to carry out the exclusive tasks of the State. A minimum of coordination is mandatory. The intervention of the State is not a form of tutorship as it is practiced in the administrative regionalization. The good functioning of Public Services at the regional plane requires some close follow-up on the part of the central authority by the administrative agents who are appointed by the latter.

Another obligation is incumbent upon the different authorities of the Sahara Region - to conform, on the one hand, to the autonomy statute of the Region and to the provisions of the Constitution of the Kingdom, on the other (Point 24 of the Project). The rules issued by the executive and the decisions rendered by the courts of law are also concerned by the rule of conformity of laws adopted by the regional Parliament.
CONCLUSION

Such is the content of the autonomy Project for the Region of the Sahara proposed by Morocco. This project puts its action in line with international legitimacy and in conformity with the goals and principles provided for by the UN Charter. The Moroccan proposal reveals the seriousness, the wisdom, the spirit of openness and the realism in the resolution of a long-lasting conflict. The Moroccan Initiative, highly welcomed by the international Community, tends to create the conditions of a process of dialogue and negotiations resulting in a political solution approved by all parties to the conflict. The populations of the Sahara Region will then be invited to decide about the autonomy Project via referendum in order to exercise their right to self-determination (Points 8 and 27 of the Project). To demonstrate its good faith and its determination to put an end to the conflict, Morocco solemnly commits itself, in case the Project is adopted, to reviewing the Constitution in order to expressly incorporate the autonomy statute in its text, “(...) in order to guarantee its sustainability and reflect its special place in the country’s national juridical architecture” (Point 29 of the Project). The Moroccan proposal goes beyond that by providing for a host of concrete coaching measures. The people who will be repatriated will benefit from “(...) to ensure full integration, into the nation’s fabric, of persons to be repatriated. This will be done in a manner which preserves their dignity and guarantees their security and the protection of their property” (Point 30 of the Project). Likewise, a general amnesty will be adopted by the State “(...) to preclude(ing) any legal proceedings, arrest, detention, imprisonment or intimidation of any kind, based on facts covered by this amnesty” (Point 31 of the Project). Furthermore, a transitional Council made
of representatives of the parties to the conflict is planned the task of which “(...) shall assist with repatriation, disarmament, demobilization and reintegration of armed elements who are outside the territory, as well as with any other action aimed at securing the approval and implementation of the present Statute, including elections” (Point 32 of the Project). Morocco is more than ever convinced that negotiation remains the unique way to reach a fair, definitive and mutually acceptable solution. For that purpose, it has launched a call to the other party, the Polisario Front, supported by Algeria, to seize the historical opportunity and measure out the significance and the range of this exceptional Initiative, to fairly evaluate it and particularly to bring to it a positive and constructive contribution. As for CORCAS, the key player in the negotiation, it has recalled on many occasions the major interest behind the Moroccan Initiative. “It considers that the autonomy proposal is not only a chance for the Sahara, but also a historical opportunity for the so much awaited Maghreb construction and for the promotion of a multiform cooperation that would contribute to the maintaining of peace and security not only in the Maghreb and the south western Mediterranean, but also in all the Sahel-Sahara region” 32.

Looking forward to the reaction of the other party to the Moroccan offer, “(...) Morocco cannot afford to remain idle; nor can it allow the country’s development and democratic process to be subject to the tactics and manoeuvres of others” (...)33”. Undoubtedly, in our era, many entities and States gather, all over the world, to build

33 Extract from the Royal speech of 6 November 2008.
solid blocks at all levels to face up to the challenges of the 21st century. Today’s world is characterised by the hegemony and the law of the fittest, where the weak have no place. In this respect, Algeria, the key supporter of the Polisario Front, keeps hindering the process of resolving the Sahara Conflict in spite of Morocco’s great efforts. “(...) Regrettably, the official policy of this country has been to thwart the positive thrust generated by the Moroccan Initiative, using its energies to maintain the status quo, with the risk of balkanization of the Maghreb and Sahel regions, at a time when profound regional and global changes require us to rally together to tackle decisive development challenges and security risks”34.

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34 Ibid.
THE POLITICO-JURIDICAL REALISM OF THE MOROCCAN INITIATIVE

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INTRODUCTION

The Moroccan Initiative for Negotiating an Autonomy Statute in the Sahara Region, presented to the Organization of the United Nations, with a view to the peaceful settlement of an artificial conflict that has only been dragging on, is the imprint of a certain realism that has been internationally confirmed and recognized. This realism, reflected as it is in the different axes of the Moroccan proposal, has a two-fold aspect: political and juridical.

At the political plane, the Moroccan proposal is in perfect conformity with the international standards required on this matter: “(...) Autonomy, such as it is applied in the rules of law, constitutes a source of inspiration for the resolution of internal political conflicts. Autonomy allows indeed a minority group within a State to enjoy its rights while offering the State some guarantees regarding unity, sovereignty and territorial integrity”1.

1 Andreas Gross, Report by the Committee on Political Questions «Expériences positives des régions autonome comme source d’inspiration dans la résolution
This statement sums up, and perfectly corresponds to, the general philosophy of the Autonomy Project proposed by Morocco. Autonomy ought to consist in the equilibrium of the rights of each party. It is precisely by concretizing such equilibrium that the Moroccan Initiative could be qualified as being realist; that is, intimately linked to the question of the distribution of competences.

Taking into consideration the exigencies of autonomy as a form of territorial decentralization, the Moroccan proposal comprises all the elements that guarantee its success.

Indeed, the realism of the Moroccan proposal has the merit of offering the chances of success to autonomy. The autonomous Region will have its proper organs that are elected by the population have exclusive legislative and executive attributions, which are linked to the State through rapports of mutual aid and cooperation, all within the framework of national sovereignty and unity. Here is then a system that has nothing to envy to those that have been in application for very long in other countries, and which is in conformity with the well recognized international criteria, even though there exists in fact no unique model of autonomy, and that the latter has to take into account the proper specificities of the concerned territory. The Moroccan proposal goes even further than certain foreign experiences, in that it provides the existence of proper regional jurisdictions, which constitutes a supplementary domain of competence to the benefit of the autonomous Region.

de conflits en Europe ». Parliamentary Assembly , Council of Europe, Doc. 9824 - 3 June 2003.
The purpose of this article is to demonstrate the manifestations of politico-juridical realism in the preservation of the interests of the State and the aforesaid Region (I), as well as in the definition of the attribution of the organs of the autonomous Sahara Region. (II).

I. POLITICO-JURIDICAL REALISM IN THE PRESERVATION OF THE INTERESTS OF THE STATE AND THE AUTONOMOUS REGION

In its presentation, the Moroccan Initiative already fits within the framework of the true meaning of autonomy. In fact, when one refers to some of the fundamental definitions given by the authorities on the matter, one understands that the autonomy proposed by Morocco is imbricated within a vision very much in tune with the concepts adopted at the international level. Here is a definition that sums up the gist of the concept of autonomy: “the concept of ‘territorial autonomy’ makes reference to a device generally put in place by a sovereign State, and by way of which the inhabitants of a determinate portion of a territory take advantage of a large administrative autonomy. Ideally, territorial autonomy would necessitate the existence of a legislative organ elected at the local level, one which is endowed with certain independent legislative powers in diverse important domains, as well as an executive that caters to the application of the legislation of local authorities in these domains, while in other domains, the executive would remain subject to the laws and orders of the central administration (...)” 2. In the same vein, Mrs. Ruth Lapidoth, an

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expert on matters of autonomy, states that «autonomy is a means of diffusing competences that allow for the preservation of the unity of the State, all the while respecting the diversity of its population»3.

Attention ought to be drawn to three essential points in the above definition:

- Autonomy is inscribed within the framework of a sovereign State.
- The autonomous Region is endowed with legislative powers in important domains.
- The State preserves its power in the domains that are its own.

It is in this sense that the Moroccan Initiative underlines that Morocco, through its proposal, is committed to: “(...) a positive, constructive and dynamic process in motion, and pledged to submit an autonomy proposal for the Sahara, within the framework of the Kingdom’s sovereignty and national unity” (Point 2 of the text of the Initiative). The Initiative secures then reconciliation between the principles of unity with that of diversity.

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Notwithstanding, if the Initiative rightly insists on the political framework of autonomy (sovereignty and national unity), it does in no way neglect the proper rights of the regional collectivity. The text of the Initiative forcefully recalls, in its Point 4, that “(...) the Kingdom of Morocco guarantees to all Sahrawis, inside as well as outside the territory, that they will hold a privileged position and play a leading role in the bodies and institutions of the region, without discrimination or exclusion”. It is the prelude to any distribution of competences exercised by proper organs in a system “(...) based on the rule of law, collective and individual freedoms, and economic and social development (...)” (Point 3 of the Initiative).

The attribution of the quality of autonomous region to the Sahara Region derives from democracy and the recognition of liberties. The juridical framework is then made an outline of-- political decentralization. No one can deny the fact this decentralization of power, which guarantees the right of citizens to participate in the running of public affairs, constitutes one of the principal fundamentals of any democratic regime. In fact, it is tightly close to citizens that the responsibilities vested upon the autonomous Region will be effectively and efficiently exercised. All of this implies, as it is indeed provided for in the Moroccan Initiative, that the autonomous collectivity be endowed with democratically elected organs, granted large competences as well as allocated the necessary means to accomplish them.

The distribution schema relative to the competences established by the Initiative reflects, in turn, an obvious equilibrium. On the one hand, “(...) the Sahara populations will themselves run their affairs
democratically, through legislative, executive and judicial bodies enjoying exclusive powers (...)” (Point 5 of the Initiative). On the other, “The State will keep its powers in the royal domains, especially with respect to defense, external relations and the constitutional and religious prerogatives of His Majesty the King” (Point 6 of the Initiative).

Concerning what guarantees the perenniality of these commitments, the fact is that the founding principles of autonomy will be recorded in the Constitution, not only in the law; any amendments will only be made in conformity with the Constitution.

Let us now examine how, on the basis of this schema, the distribution of competences reflects a certain realism, and how it guarantees the rights and interest of everyone.

II. POLITICO-JURIDICAL REALISM IN THE DEFINITION OF ATTRIBUTION

It is quite certain that in order to prevent any litigation or conflict over attributions, the autonomy statute has to produce as clear as possible a distribution of the competences between the central power and the autonomous collectivity. It must be said that any interpretation given during the application of this statute has to be submitted to a national organ that comes under the jurisdiction of the State. To this last requirement corresponds the very notion of autonomy, itself defined as free administration within a preexisting juridical order, that of the sovereign State. On the other hand, in order to bestow a real content on autonomy, the autonomous collectivity has of necessity to be capable of shouldering the
responsibility to exercise an important part of the competences corresponding to its regional level.

Such are the principal parameters to be taken into consideration in our examination of the question; as a general rule, competences are shared out between the different territorial levels, the State and the territorial collectivities, all in accord with the vocation principle. The State will be granted attributions that correspond to its national vocation, while the autonomous Region will be granted competences that are geared towards regional interest. A last question remains which pertains to the dynamic character of the competences thus distributed: the list of the domains of intervention in favor of the autonomous Region is likely to evolve and become much more important, notably in virtue of the delegations of competences that the State would always be willing to allow for.

Having made these precisions, it is appropriate to examine more closely, on the basis of the Moroccan Initiative, the attributions of each part, with a view to pinpointing all the realism underpinning their delimitation.

A. THE COMPETENCES OF THE AUTONOMOUS SAHARA REGION

It is first of all specified in Point 12 of the Initiative that: “*in keeping with democratic principles and procedures, and acting through legislative, executive and judicial bodies, the populations of the Sahara autonomous Region shall exercise powers, within the Region’s territorial boundaries, mainly over the following:*”

- Region’s local administration, local police force and jurisdictions;
in the economic sector: economic development, regional planning, promotion of investment, trade, industry, tourism and agriculture;
Region’s budget and taxation;
infrastructure: water, hydraulic facilities, electricity, public works and transportation;
in the social sector: housing, education, health, employment, sports, social welfare and social security;
cultural affairs, including promotion of the Saharian Hassani cultural heritage;
environment”.

A first remark stands out in this respect. The Initiative only draws an important list of the domains of intervention of the autonomous Region. As to the attributions that will be exercised within these domains, the fact is that they cannot be validly inventoried merely because they are numerous, which is perfectly in tune with one of the exigencies of autonomy; namely, that according to which the autonomous organs have to have the possibility of participating in an important part of the management of public affairs. Note also that these attributions will be exercised by the proper organs of the autonomous Region.

Also, the Moroccan Initiative responds to another exigency; namely, to put at the disposal of the autonomous entity the resources requisite for the implementation of their responsibilities: “The Sahara autonomous Region will have the financial resources required for its development in all areas (…)” (Point 13 of the Initiative). The two questions being intertwined, it is appropriate to
expose the nature of these resources, whose list is not restrictive anyway. “(...) Resources will come, in particular, from:

- taxes, duties and regional levies enacted by the Region’s competent authorities;
- proceeds from the exploitation of natural resources allocated to the Region;
- the share of proceeds collected by the State from the exploitation of natural resources located in the Region;
- the necessary funds allocated in keeping with the principle of national solidarity;
- proceeds from the Region’s assets” (Point 13 of the Initiative).

**B. THE COMPETENCES OF THE STATE**

In the same vein, always within the same logic of juridico-political realism and the preservation of the interests of each party, the text of the Initiative stipulates in its Point 14 that: “The State shall keep exclusive jurisdiction over the following in particular:

- the attributes of sovereignty, especially the flag, the national anthem and the currency;
- the attributes stemming from the constitutional and religious prerogatives of the King, as Commander of the Faithful and Guarantor of freedom of worship and of individual and collective freedoms;
- national security, external defense and defense of territorial integrity;
- external relations;
- the Kingdom’s juridical order”. 
However, within the framework of a greater openness, the Moroccan proposal stipulates that: “State responsibilities with respect to external relations shall be exercised in consultation with the Sahara autonomous Region for those matters which have a direct bearing on the prerogatives of the Region. The Sahara autonomous Region may, in consultation with the Government, establish cooperation relations with foreign Regions to foster inter-regional dialogue and cooperation” (Point 15 of the Initiative).

CONCLUSION

As we have seen, the Moroccan Initiative is doubly realist, and draws direct inspiration from the fundamental principles of freedom and democracy in its endeavor to realize a beneficial equilibrium between the interests of each party. Autonomy is by definition based on the delegation of the freedom of action, with the preservation of national unity. In consequence, aside from the attributes that normally come under the jurisdiction of the State, the autonomous collectivity can exercise all the attributions connected with its economic and social development, and that come under the competences of the autonomous region.