

## **Western Sahara as a Hybrid of a Parastate and a State-in-exile: (Extra)territoriality and the Small Print of Sovereignty in a Context of Frozen Conflict**

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### **Abstract**

This paper argues that the “declarative” parastate of the SADR claiming sovereignty over Western Sahara is better understood as a hybrid between a parastate and a state-in-exile. It relies more on external, “international legal sovereignty”, than on internal, “Westphalian” and “domestic” sovereignty. While its Algerian operational base in the Tindouf refugee camps makes the SADR work as a primarily extraterritorial state-in-exile de facto, its maintaining control over one quarter of Western Sahara’s territory proper allows it to at least partially meet the requirements for declarative statehood de jure. Many case-specific nuances surround the internal sovereignty of the SADR in relation to criteria for statehood, i.e. territory, population and government. However, examining this case in a comparative light reveals similarities with other (secessionist) parastates. It exists within the context of a frozen conflict, where the stalemate has been reinforced by an ineffective internationally brokered peace settlement and the indefinite presence of international peacekeeping forces. Global powers have played a major role in prolonging the conflict’s status quo while the specific resilience of the SADR as a parastate has been ensured by support from Algeria as an external sponsor. The path to sovereignty appears to be blocked in every possible way.

### **Key words**

Parastates; states-in-exile; frozen conflicts; sovereignty; declarative and constitutive statehood; Western Sahara/SADR

If the nature of parastates makes them all unfit for Westphalian models due to the contested nature of their declarative and constitutive statehood (Rossi this volume), Western Sahara (the Sahrawi Arab Democratic Republic [SADR]) might possibly be the least fit. None of the terms that have been put forward to refer to those liminal polities (Mälksoo 2012; McConnell 2017; Corcuff 2012) that claim statehood but lack full sovereignty in either internal/operational or external/recognition terms do justice to this case with full accuracy. The so-called SADR certainly fulfils four of Scott Pegg’s (1998, 26) six essential definitional elements of what he calls “de facto states”: organized political leadership with some popular support, capacity to provide governance or governmental services to a given

population, self-assigned capacity to enter into relations with other states and search for widespread international recognition of its sovereignty (see also Berg and Toomla 2009; Florea 2017). However, what is distinctly missing here is, first and foremost, an effective control of the territory at stake for an extended period of time. Secondly, it cannot be absolutely claimed that the SADR has been “unable to achieve any degree of substantive recognition and therefore remains illegitimate in the eyes of international society” (Pegg 1998, 26) as, partial as it might be, its degree of international recognition is not close to zero or limited to just a handful of states. The SADR currently maintains diplomatic relations with around 40 sovereign states.

The same issues apply to the criteria for a political entity to qualify as a “quasi-state” set by Pål Kolstø (2006, 725-726; see also Jackson 1993), as well as to Nina Caspersen’s (2012, 11) definition of “unrecognized states” – territories/entities that have “achieved de facto independence” and whose “leadership is seeking to build further state institutions and demonstrate its own legitimacy” but have failed to gain international recognition as independent states (see also Caspersen and Stansfield 2011, 1-2). Kolstø considers Western Sahara as a “borderline case” mainly because its leadership is not “in control of (most of) the territory it claims” (2006, 725-726), while Caspersen, though acknowledging “a number of similarities with the unrecognized states”, outright excludes the SADR from this category for failure to meet the “requirement for de facto independence and *territorial control*” (2012, 8, emphasis in original).<sup>1</sup> Only more flexible concepts such as “contested states” (Geldenhuis 2009) and “parastates” (Liotta 2001) can accommodate the case of Western Sahara, as they put the territorial element aside in emphasizing these polities’ relationship with regular states – as “a force acting *against* the state, *within* the state, or *in place of* the nonfunctioning state” (Liotta 2001, 187, emphasis in original) – and the “internationally contested nature of their purported statehood” (Geldenhuis 2009, 3).

Within the liminal universe of parastates – populated by political creatures as disparate as Taiwan in East Asia, Palestine in the Middle East, Somaliland in the Horn of Africa, Northern Cyprus in the Mediterranean, Kosovo in the Balkans, and Abkhazia, South Ossetia, Nagorno-Karabakh, Transnistria, Donetsk and Luhansk in the post-Soviet space – what makes Western Sahara/SADR anomalous and unique is that it has not originated from secessionism but from foreign occupation in the context of deviant or thwarted decolonization process. Therefore, unlike most of the breakaway entities above, its declaration of independence has *not* been in contravention of international law and has *not* placed the parastate “in open conflict with a majority of the international community” (Rossi and Castan Pinos

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<sup>1</sup> The definitional criteria for parastates included in the introduction to this special issue also include that of “[holding] de facto control over all, or most, of the territory it claims for at least two years” (Rossi and Castan Pinos this volume), which the SADR does not meet.

this volume); it has just been in contestation of, and in conflict with, another state's claims to the same land. In this respect, the SADR only bears some resemblance to Palestine, which is classified in this special issue as a "declarative state", namely one that has had its sovereignty usurped or denied and has been unable to achieve full international recognition due to competition from another state that is "actively working to deny its legitimate existence" (Rossi and Castan Pinos this volume). In both cases, there is no host country the parastate has broken away from to supplant its power over the territory, but an inability to govern the latter due to its occupation and annexation by a historically and legally separate neighboring state.

This article contributes to this conceptual and typological discussion by arguing that, rather than a full-blown parastate, the SADR is better understood as a hybrid between a parastate and a state-in-exile (McConnell 2016). While its Algerian operational base in the Tindouf refugee camps makes it work as a primarily extraterritorial state-in-exile *de facto*, its maintaining control over one quarter of Western Sahara's territory proper makes it at least partially meet the requirements for declarative statehood *de jure*. Based on this, and despite the fairly unique nature of the beast, the article aims to examine the case of Western Sahara in a comparative light. This is a highly productive exercise not only with a view to counter the self-defeating inclination towards exceptionalism that has traditionally weighed down the academic and policy discussion of this conflict. Also, it illuminates a striking number of parallels with other parastates, especially in relation to the context of frozen conflict and blocked path to sovereignty. The following pages will first address the particulars of Western Sahara as a "declarative", non-secessionist parastate whose claimed territory is mostly under foreign occupation, including some comparisons with the most similar case of Palestine. Second, the paper will examine the similarities with other (secessionist) parastates with regard to their conflict context. Third, a more case-specific analysis will delve into the many nuances surrounding the internal sovereignty of the SADR in relation to the first three criteria for statehood of the 1933 Montevideo Convention, i.e. territory, population and government. Finally, this study will consider its external sovereignty in terms of international recognition by other sovereign states, membership of international organizations and the growing legal-political dispute over Morocco's exploitation of the natural resources of the three quarters of Western Sahara under its control.

## **1. The unique origin and features of Western Sahara/SADR as a non-secessionist parastate and a state-in-exile**

The "declarative" parastate of Western Sahara grew out of a derailed decolonization process. In the 1960s the UN listed the then-called Spanish Sahara as a non-self-governing territory and urged Spain to organize a referendum for self-determination. At the same time that the Polisario Front emerged in

the early 1970s as an indigenous Sahrawi national liberation movement seeking independence from Spanish colonial rule, neighboring Morocco upgraded its claims to the territory by requesting an advisory opinion from the International Court of Justice (ICJ) on the legal status of its historical links with the Sahrawi tribes prior to the Spanish colonization in the late 19<sup>th</sup> century. The ICJ's conclusion issued in October 1975 found that there were "legal ties of allegiance between the Sultan of Morocco and some of the tribes living in the territory of Western Sahara" but these "[did] not establish any tie of territorial sovereignty" which would overrule "the principle of self-determination through the free and genuine expression of the will of the peoples of the Territory".<sup>2</sup> Morocco defied this unfavorable – however mixed – legal opinion, as well as the *uti possidetis* principle ensuring the stability of borders during the decolonization of Africa, by invading Western Sahara through the so-called Green March of 350,000 civilians. Such move was "deplored" by the UN Security Council which "[called] upon Morocco to immediately withdraw from the Territory of Western Sahara all the participants in the march".<sup>3</sup>

Yet, in parallel, and in the very days when the dictator Francisco Franco was dying, the Spanish government ended up transferring the administration of the territory to Morocco and Mauritania in secret tripartite negotiations that led to the Madrid Accords. Morocco went on to occupy and annex the northern two-thirds of the land following the Spanish withdrawal in early 1976, while the Polisario Front initiated a guerrilla war against the Moroccan and Mauritanian armies, and around half of the indigenous Sahrawi population fled across the border to refugee camps near Tindouf, in south-western Algeria. This is where the SADR, the parastate examined here, took root as a state-in-exile that would thenceforth work as primarily extraterritorial in practice, a feature that further enhances its uniqueness – although it saw its formal proclamation and set its "temporary" capital in the oasis town of Bir Lehlou, in the eastern strip (about 25%) of Western Sahara proper controlled by the Polisario Front, with the aim to ensure a minimum degree of declarative statehood. The Mauritanian involvement in the war was short-lived, and in 1979 the country made peace with the Polisario Front and relinquished its share of the territory, which was to be appropriated also by Morocco. The intensity of armed combat started decreasing in the mid-1980s, after Morocco consolidated its military control over the annexed territory by erecting a military berm to isolate it from Polisario attacks. UN conflict resolution efforts resulted in a ceasefire and a Settlement Plan accepted by Morocco and the Polisario Front in 1991, which provided for a self-determination referendum for the Sahrawi people, but the implementation of the latter became stalled due to the parties' insuperable disagreement about the electorate entitled to vote.

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<sup>2</sup> See <http://www.icj-cij.org/docket/index.php?sum=323&p1=3&p2=4&case=61&p3=5>.

<sup>3</sup> S/RES/380 (1975), [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/380\(1975\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/380(1975)).

As a result of this historical background, today foreign occupation of (most of) the claimed land appears to be the key distinctive feature that sets Western Sahara/SADR apart from the majority of parastates in the world, depriving it of substantial territorial control and making it only comparable to Palestine. The UN General Assembly has characterized the presence of Morocco in the western 75% of Western Sahara as “occupation” on two separate occasions.<sup>4</sup> The SADR therefore appears as a self-proclaimed state dispossessed of its territory by an occupying state without title to sovereignty<sup>5</sup> which exercises effective authority and control over it. Interestingly for comparative purposes, four significant legal nuances emerge when contrasting the situations of Western Sahara and Palestine. First, contrary to the case of the Israeli occupation of Palestine, in Western Sahara occupation came hand in hand with straightforward annexation (i.e. full incorporation into the occupying state and administration as part of its territory) after the Moroccan two-stage takeover of most of the territory of the former Spanish colony in 1975-1976 and 1979-1980. Secondly, in Western Sahara occupation is superimposed on a protracted colonial status, or unfulfilled decolonization as a non-self-governing territory. This means that, when it comes to determining the international legal regime applicable here, there exists a duality between international humanitarian law including the law of occupation (IV Hague Convention of 1907, IV Geneva Convention of 1949 and 1<sup>st</sup> Additional Protocol) and decolonization law based on the right to self-determination (articles 73-74 on non-self-governing territories of the Charter of the UN, plus the two UN human rights covenants of 1966) (see Saul 2015). International lawyers tend to consider that these two statuses/situations are not mutually exclusive: “Western Sahara is also a non-self-governing territory, akin to colonies, but that does not change its status as occupied” (Wrange and Helaoui 2015, 40; see also Soroeta Liceras 2016, 231; Kassoti 2017a, 352; Kassoti 2017b, 29; Soroeta Liceras 2014). Yet, in practice, to date this duality has entailed a considerable deal of legal controversy and blurriness.

Thirdly, this is compounded by the fact that Western Sahara is the only territory on the UN list of non-self-governing territories for which there is no indication of an administering power – since, as put in a footnote, Spain has considered itself “exempt from any responsibility of any international nature in connection with the administration of the Territory” since February 1976.<sup>6</sup> A number of jurists argue that Spain remains the *de jure* administering power of Western Sahara (Kassoti 2017b, 33) since the Madrid Accords violated article 73 of the UN Charter and failed to be endorsed by the UN General Assembly. Such has been the position advocated by the African Union (AU) and its special envoy for Western Sahara Joachim Chissano since 2014 (Cembrero 2014). By contrast, others contend that “given that the Western Sahara continues to be designated as a non-self-governing territory (...) by the UN,

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<sup>4</sup> A/RES/34/37 (1979), <http://www.un.org/documents/ga/res/34/a34res37.pdf>, paragraph 5. A/RES/35/19 (1980), <http://www.un.org/documents/ga/res/35/a35r19e.pdf>, paragraph 3.

<sup>5</sup> See Art. 42 of the Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War (The Hague Regulations), adopted on 18 October 1907.

<sup>6</sup> See <http://www.un.org/en/decolonization/nonselvgovterritories.shtml>.

and remains primarily under Moroccan control, there is a strong argument that Morocco should be classified as the *de facto* administrator of the territory” (Torres-Spelliscy 2014, 236) – a category that does not make any legal sense according to proponents of the former position (Soroeta Liceras 2016, 208-209). Fourthly and finally, a combination of this legal uncertainty and the politics of the conflict has made key international actors reluctant to apply the term “occupation” to the situation of Western Sahara. This is the case of the world’s most powerful states and even the UN, where the existence of such taboo was made evident by Morocco’s frenzy reaction after Secretary-General Ban Ki-moon exceptionally used the word “occupation” in March 2016 (Reuters 2016). The political peripherality and irrelevancy of the conflict for Western powers have certainly not contributed to dispelling all these ambiguities.

## **2. A context of frozen conflict and blocked path to sovereignty: similarities with other parastates**

Even though the historical point of departure and the legal features of Western Sahara/SADR as a non-secessionist parastate are fairly unique, its current political context bears a striking number of parallels with that of other faraway and dissimilar, secessionist cases addressed in this special issue (see Rossi this volume). The first is that similarly to its counterparts in the post-Communist space and Northern Cyprus, the parastate of Western Sahara exists within a frozen conflict; that is, one in which “the violence stopped, but the underlying interests of the formerly warring parties have neither been abated nor addressed” (Perry 2009, 36). A universal definition of frozen conflict that strips the concept of the post-Soviet bias with which it originally became mainstream in the 1990s logically includes this case where open armed confrontation has been absent for a relatively extended period of time but no proper resolution or peace settlement has been achieved to the satisfaction of the parties (Chávez Fregoso and Živković 2012). Indeed, since the early 1990s, and even earlier, the conflict over Western Sahara pitting Morocco against the Polisario Front does not qualify as a war or armed conflict in international databases such as Correlates of War or the Uppsala Conflict Data Program (UCDP)/Peace Research Institute in Oslo (PRIO) Armed Conflict Database, as it does not meet the definitional requirement of sustained combat involving organized armed forces and resulting in a minimum of 1,000 battle-related deaths per year (Fernández-Molina 2017a, 12-13). However, as noted on the UCDP website, “the basic incompatibility between the parties – the status of the territory of Western Sahara – remains unresolved”.<sup>7</sup>

Secondly, as elsewhere, the parastate’s stalemate has been reinforced by an ineffective internationally brokered peace settlement (Rossi this volume). Such is most conspicuously the case of the UN Settlement Plan that Morocco and the Polisario Front agreed to in 1991 at the time of their ceasefire

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<sup>7</sup> See <http://ucdp.uu.se/#/statebased/721>.

declaration, which envisaged the holding of a referendum for self-determination for the Sahrawi people. This peace settlement had the in-built – maybe inevitable – flaw of being conceived of as a step-by-step process rather than a comprehensive final agreement, and therefore being conditional on the voluntary cooperation of the two parties (Jensen 2012, 33), which would subsequently reveal itself to be elusive in the absence of international enforcement or compelling pressure. The implementation of the plan was wrecked due to the parties' irreconcilable claims about the referendum electorate and how to determine which Sahrawis should be entitled to vote – *jus soli* vs. *jus sanguinis* – on which there was no prior deal. After trying several technical fixes that were useless for curbing the politicization of the voter identification process, in the early 2000s the UN peace-making efforts moved into a second stage that prioritized a series of mixed “political solutions”: the so-called Baker Plans I (2001) and II (2003), which involved a combination of temporary autonomy phase (under Moroccan sovereignty) and a referendum to determine the final status of the disputed Western Sahara territory. Both of these plans were unsuccessful as well, with each of them failing to achieve the consent of one of the parties – the Polisario Front in 2001 and Morocco in 2003. This led the whole architecture of the UN peace brokering to virtually collapse in 2007, when the UN Security Council called on the parties to enter into “negotiations without preconditions” (Theofilopoulou 2010), thereby bringing the process back to square one. The decolonization framing of the conflict and the UN Settlement Plan including the self-determination referendum have remained fully valid to date at the legal level, in any case.

Thirdly, as in the case of other parastates, the indefinite presence of international peacekeeping forces on the ground has also protracted conflict resolution (Rossi this volume). The UN Mission for the Referendum in Western Sahara (MINURSO), which was established in 1991 as part of the measures to implement the Settlement Plan and with the specific task of organizing the self-determination referendum, as per its name, remains deployed as one of the oldest active UN peacekeeping missions in the world. Its mandate has continued to be annually renewed by the Security Council even after the voter identification process collapsed and as it became clear that Morocco was disengaging from the Settlement Plan roadmap in the early years of King Mohammed VI's reign (Fernández-Molina 2016, 49). With the referendum route blocked, MINURSO's functions became restricted to verifying the compliance of the ceasefire by both parties, providing logistical support for confidence measures (such as family visits) organized by the Office of the UN High Commissioner for Refugees (UNHCR) and monitoring the demining work carried out on both sides of the berm: in the areas under Moroccan rule and the Polisario-controlled strip of Western Sahara that is often referred to as its “liberated territory” (interview with MINURSO senior political advisor, Laayoune, 10 June 2013).

The possibility of admitting the UN's failure to solve the conflict and terminating MINURSO has been raised several times since Secretary-General Kofi Annan first put it on the table in 2002, but has never

materialized. Since the end of the last decade the role of MINURSO has become increasingly politicized as a result of the initiative, staunchly opposed by Morocco, to extend its mandate to human rights monitoring, bringing it into line with those of most post-Cold War UN peacekeeping missions (Capella Soler 2011; Khakee 2014). This demand became the main bone of contention in UN Security Council debates on Western Sahara from 2009 to 2015, provoking a series of unprecedented diplomatic rows between Morocco and the UN as well as the US – as the administration of Barack Obama supported it (Fernández-Molina 2016, 68-72). Tensions with the UN would reach their peak in March 2016, when Morocco expelled the civilian staff of MINURSO to protest Secretary-General Ban Ki-moon’s one-off reference to the “occupation” of Western Sahara (Reuters 2016).

Fourthly, another structural condition shared with other parastates is that neither the diplomatic impasse over the Western Sahara conflict nor the disputed status of the SADR can be understood without the role of global powers in prolonging the status quo – by action and mostly by omission. The key international players involved in this affair during the Cold War (see Zoubir and Volman 1993) and post-Cold War eras have been four of the five permanent members of the UN Security Council – France, US, United Kingdom and Russia – plus Spain as the former colonial power, which together form the so-called Group of Friends of Western Sahara at the UN. Altogether, these states have contributed to maintaining the status quo mainly by preventing the UN from moving from a consensus-based and non-binding settlement approach under Chapter VI of the UN Charter to an enforced solution under Chapter VII. France has been the most active and consistent in its overt diplomatic support for Morocco’s sovereignty claims over Western Sahara, including the defense of Rabat’s positions, as if by delegation, within international fora such as the UN and the EU. Since the turn of the millennium, this unflinching postcolonial alliance has proved to be a lifeline for Morocco when this country abandoned the UN Settlement Plan route to try and promote the idea of autonomy under Moroccan sovereignty for the disputed territory, and following its awkward rejection of the 2003 Baker Plan II, whose endorsement by the UN Security Council was eventually watered down to rule out any coercive solution against Rabat’s will. France also subsequently helped to block all attempts to extend MINURSO’s mandate to human rights monitoring, remaining in general the major sponsor state preserving Morocco’s claims (Fernández-Molina 2016, 165, 168).

Meanwhile, Spain has pursued a difficult balancing act on this conflict, being subject to competing pressures from both sides due to its historical association with the Sahrawi people, as well as its special influence on the matter within part of the international community. However in practice, even though the official position has remained one of “active neutrality” and backing for UN initiatives, from the moment of the colonial disengagement and more distinctly since the end of a deep bilateral crisis with Morocco in 2001-2003, the Spanish governments’ actual preferences have subtly leaned toward



virtually converging with the French ones. By extension, a combination of the French-Spanish influence, wider intergovernmental discrepancies among member states and the low profile of this frozen conflict has led the EU to minimize its engagement with the Western Sahara issue, though betraying some pro-Moroccan bias in practice. The EU's official self-limitation and minimal position of support for UN peace-making efforts has coexisted with a clear-cut asymmetry in the contractual relations with the two conflict sides, lack of territorial differentiation within the bilateral economic cooperation deals with Morocco, silence about Western Sahara in the related political documents and limited direct interaction with Sahrawi actors including the SADR (Fernández-Molina 2017b, 221-225: see also Bouris and Fernández-Molina 2018).

On the other side of the Atlantic, the US has largely maintained an “unambiguously pro-Moroccan” stance on Western Sahara in terms of diplomatic and military support since 1975 (Mundy 2006, 300); however it has fallen short of formally recognizing Moroccan sovereignty over the annexed territory as actively lobbied for by Rabat. This has translated into a stronger territorial differentiation stance than the EU's, which materialized in the explicit exclusion of the Western Sahara territory from the bilateral US-Morocco free trade agreement signed in 2004.<sup>8</sup> At the same time, the boldest attempts to unblock or to at least breathe new ideas into the failing UN peace-making process must be all credited to the US diplomatic impulse and influence. Such is the case of the Baker Plans I and II (Zoubir and Benabdallah-Gambier 2005, 186-187), and the more recent draft UN Security Council resolution envisaging the extension of MINURSO's mandate to human rights monitoring in 2013 – nevertheless eventually withdrawn. What was lacking in any event, as became obvious following Morocco's rejection of the Baker Plan II in 2003 and during the Morocco-US diplomatic crisis ten years later, was any real political will to impose a conflict solution on this ally however spoiling its behavior might turn out to be. The only constructive outcome of the 2013 row was a secret commitment to improve the human rights situation in the Western Sahara territory annexed by Morocco – putting an end to military trials of civilians, allowing visits by the Office of the UN High Commissioner for Human Rights (OHCHR) and legalizing pro-independence Sahrawi associations – made by King Mohammed VI during his first meeting with President Barack Obama in Washington in November 2013 (Fernández-Molina 2016, 204, 207, 209).

Fifthly, as in other cases, while global powers have laid the conditions for conflict freezing and irresolution, what has specifically ensured the resilience of the SADR as a parastate has been its reliance on support from an external sponsor or patron providing essential political, military, economic and diplomatic assistance (Rossi this volume). Such has been the role played in this instance by Algeria, the Polisario Front and SADR's most vital and consistent foreign backer, and the host of the Sahrawi

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<sup>8</sup> See <http://www.bilaterals.org/IMG/pdf/0407191-ustr-moroccoFTA.pdf>.

refugee camps near Tindouf where this parastate has its headquarters. A notable difference with the external patrons of most of the parastates examined in this special issue is that Algeria is not powerful enough to be considered as a global power, but just a regional one; Turkey's sponsorship of Northern Cyprus and Armenia's backing for Nagorno-Karabakh may be the only comparable cases. Algeria's historical motivations for taking on this financial and security burden range from identity, normative and ideological grounds – the anticolonial and third-world solidarity integral to Algerian nationalism – to geopolitical and material self-interest – curbing Morocco's menacing territorial expansion along the country's southwestern flank or gaining access to the Atlantic for its energy exports (Thieux 2017). Likewise, the extent to which Algeria's involvement has been a necessary condition for the survival of the SADR as a parastate, absent which the Sahrawi nationalist project would have languished long ago, remains politically contentious. Proponents of the pro-Moroccan position argue that Western Sahara is first and foremost a regional conflict driven by pre-existing postcolonial territorial and hegemonic rivalry between Morocco and Algeria, which are the two real conflict parties, with Sahrawi political agency occupying a secondary place if at all. A more nuanced assessment contends that, although Algeria certainly exerts an unparalleled influence on the Polisario Front/SADR, this falls short of amounting to outright puppet-like control or veto power (Mundy 2010).

Sixthly and finally, Western Sahara shares with other parastates the stalemate created by its blocked path to sovereignty in every possible way. On one hand, the scenario that the occupying/annexing country Morocco recognizes the parastate's independence or accepts holding a self-determination referendum which paves the way towards full sovereignty following the East Timor model (Rossi this volume) has to be almost ruled out in the current circumstances. The only thinkable way to make this happen would be that the UN Security Council shifted its approach towards an enforced solution and/or global powers such as the US and France had the political will to put strong pressure on Morocco. On the other hand, the scenario of Western Sahara's agreed incorporation to or unification with the Moroccan state as a highly autonomous region seems equally improbable due to quite existential obstacles on both sides. The SADR/Polisario Front leadership is unlikely to willingly accept that "it has more to gain as part of another country than going alone" (Rossi this volume). A negotiated settlement along these lines would amount to them committing political suicide, sacrificing popular legitimacy by admitting defeat after over 40 years of struggle for self-determination and relinquishing the self-interested political benefits of the status quo, such as authority within the refugee camps and control over the "liberated territory" – plus individual material rents in some cases. These almost existential fears may explain the intensifying threats of return to armed struggle made by the SADR/Polisario Front in 2007-2008, when the 2007 Moroccan Autonomy Plan for Western Sahara seemed to be getting the international community's wind at its back and becoming inescapable (Fernández-Molina 2016, 65-66).

At the same time, and despite the strong diplomatic push for the Autonomy Plan it has maintained over the last decade, the Moroccan regime has also proven its reluctance to pay what would amount to a high price in terms of power-sharing and decentralized rule in order to enable a “political solution” for the Western Sahara conflict. This type of fear of peace is one of the plausible reasons for its earlier rejection of the Baker Plan II in 2003. Rabat’s spoiling reversal was puzzling for the UN and the US because the provisional power-sharing arrangement and the final referendum’s electorate envisaged by this plan were pretty similar to those of the Baker Plan I, keenly accepted by Morocco in 2001, and seen as rationally favorable to Moroccan interests – the electorate was broadly defined so as to include a large number of Moroccan/northerner settlers residing in Western Sahara who should in principle support integration into Morocco. In trying to explain the Moroccan authorities’ lack of self-confidence, it has been argued that they may have gotten scared that a victory by SADR/Polisario Front returnees in the elections to the provisional Western Sahara authority (Zunes and Mundy 2010, 230) would lead to their losing control over the territory during the transitional autonomy stage and the independence option prevailing in the final referendum (Hernando de Larramendi 2008, 191-192). Deeper down, their uneasiness with decentralized rule was also due to more structural factors such as the authoritarian and highly-centralized nature of the monarchical regime, and the uncertainty about the future role of the army (Fernández-Molina 2016, 57).

Some of the stumbling blocks related to centre-periphery relations would become apparent in the wider context of the ambitious “advanced regionalization” process announced by Mohammed VI in 2010, whose legislative development and implementation were soon politically stalled and demoted (Ojeda-García and Suárez-Collado 2017), as well as during the sustained wave of political protest of regionalist and ethnic (Amazigh) character that has been going on in the northern region of the Rif since October 2016. As in the case of other parastates, Rabat’s domestic management of the Western Sahara issue (i.e. its governance over the annexed territory) has always been conditioned by the concern that “the decision of any central government to award special status to one contested territory risks encouraging other (potentially) restless communities in the country” (Rossi this volume).

### **3. An internal sovereignty full of small print: territory, population and government**

Against Western Sahara’s context of frozen conflict and blocked path to sovereignty, this section examines the internal sovereignty of the SADR as a “declarative” parastate by referring to the first three of the four criteria for statehood established by the 1933 Montevideo Convention on the Rights and Duties of States, i.e. a permanent population, a defined territory and a government. These essentially correspond, in Stephen D. Krasner’s distinction, to “Westphalian sovereignty” – “territoriality and the

exclusion of external actors from domestic authority structures” – and “domestic sovereignty” – “the formal organization of political authority within the state and the ability of public authorities to exercise effective control within the borders of their own polity” (Krasner 1999, 20, 4). The fourth and more external criterion, i.e. the capacity to enter into relations with the other states, will be addressed in the following section.

It has been argued that the SADR meets all of the Montevideo Convention conditions as, first, it rules over the Tindouf refugee camps where most of the indigenous Sahrawi population is claimed to live; second, it controls, through the Polisario Front, one fourth of the land of Western Sahara proper, the so-called “liberated territory”, where the SADR’s “temporary” capital is officially located; third, it has its own state-like governmental administration; and fourth, it maintains – or has maintained – international relations with around 80 states (Pinto Leite 2015, 370). However, the reality is that the fulfillment of each of these conditions is only partial and qualified. The UN continues to consider Western Sahara a non-self-governing territory, while the SADR’s primarily extraterritorial nature makes it resemble more of a state-in-exile. Other elements affecting its statehood at the center of the debate are the relationship between ethnic and national identity – or the question of who is a Sahrawi – and the SADR’s capacity for self-governance or, as Wilson (2016, 11) prefers, “governance-in-exile”.

In terms of territory, the piece of land recognized by international law and claimed by the Polisario Front/SADR as making up the state of Western Sahara is that of the colonial Spanish Sahara, which covers some 266,000 square kilometers between 27°40’N and 21°20’N latitude. Colonized beginning in 1884 – although it did not come under full Spanish control until the 1930s – this largely desert land was inhabited by the Bidani, “white” Arab, Hassaniya-speaking nomads with a unique tribal organization (Barreñada 2017, 277-278, 291). As usual in colonial geographies, the Spanish Sahara’s borders did not totally correspond either to the entire space within which this nomad people had for centuries circulated or even to the Sahrawi population in a more restricted, contemporary sense, as some of this territory’s indigenous inhabitants would move into areas under French colonial control to the northeast, east and south – today’s Morocco, Algeria and Mauritania. The colonial and postcolonial relationship between international borders and ethnic/tribal identities was further complicated in 1912, when a legally separate Spanish Protectorate was established in southern Morocco (Barreñada 2017, 278; San Martín 2010, 58).

From the point of view of international law, as argued above, today the territory of Western Sahara possesses a dual identity. It constitutes a non-self-governing territory included in the UN list thereof since 1963 and it has additionally become an occupied territory due to Morocco’s unlawful annexation of three-quarters of it in 1976/1979. The consequence of this anomalous lack of territorial control for

the SADR's statehood is that the parastate, being headquartered in the Tindouf refugee camps in Algeria, is largely extraterritorial in practice. Often described as a "refugee state" (Smith 2014, 26) or a "tent state" (Isidoros 2018), its primary area of subsidiary territorial control, where it exercises some *de facto* authority by delegation of the Algerian state, lies in the camps. This arguably provides the SADR with an extraterritorial form of what Krasner (1999, 20) calls "Westphalian sovereignty", i.e. "territoriality and the exclusion of external actors from domestic authority structures". Non-interference is claimed in the camps, for instance, in order to prevent UNHCR from conducting a refugee population census there. There exist also practical elements of "interdependence sovereignty", based on the control of the movement of people and goods through the camps' borders and entrance checkpoints, and "domestic sovereignty", associated to the monopoly of the use of violence and law enforcement by the Sahrawi National Police and National Gendarmerie within this space (Wilson 2016, 12; San Martín 2010, 130; see Krasner 1999: 3-25). All of this points to the idea that the SADR works first and foremost as a state-in-exile presenting parallels with other long-term expatriate governing authorities such as the Central Tibetan Administration in India (McConnell 2016) and formerly the Palestine Liberation Organization (PLO) in Jordan, Lebanon and Tunisia. The Sahrawi case's particularity, however, is that displacement is not limited to a national political elite or leadership – a government-in-exile – but also includes a significant civilian population (Wilson 2016, 10). Some have gone as far as to claim that, under these circumstances, "Sahrawis are no longer refugees but citizens in their own land" (James Firebrace cited in San Martín 2010, 119).

In addition, beyond the camps, there is another important qualification to the SADR's extraterritoriality, which is crucial in terms of its fulfilling the requirements for declarative statehood. Since the early years of armed conflict, as mentioned above, the Polisario Front has maintained military control over an eastern strip of land (about 25%) of Western Sahara proper referred to as their "liberated territory". Although long perceived as dangerous and largely uninhabited except for some nomads, the SADR's *de facto* or "temporary" capital has always remained officially located in such area – in the oasis towns of Bir Lehlou and later Tifariti – and in recent years the SADR/Polisario Front have multiplied symbolic efforts to showcase and politically capitalize on their control over it. Between late 2007 and early 2008, an unprecedented decision was taken to hold the Polisario Front's 12<sup>th</sup> congress in Tifariti, and plans were announced to establish the SADR parliament's temporary premises there (Fernández-Molina 2016, 65-66). In 2011, the SADR government formally moved its headquarters to Tifariti. Moreover, in the past decade there has been official encouragement for (civilian) Sahrawi refugees to resettle from the camps to emerging urban developments in the "liberated territory" (Wilson 2016, 251), where the still mostly nomad population is estimated at 30,000 (Norwegian Refugee Council 2014, 4). The growing political emphasis on the control of this territory supports the argument made in this article that the SADR is better understood as a hybrid between a state-in-exile and a more typical parastate.

When it comes to the population of Western Sahara/SADR as a parastate, a number of qualifications must be likewise made. Firstly, as in other conflicts elsewhere, there is a discrepancy between ethnic and political understandings of who are the Sahrawis. Due to the historically nomadic nature of the indigenous Hassaniya-speaking Bidani tribes and the aforementioned mismatch between colonial borders and ethnic/tribal identities, ethnic Sahrawis inhabit a larger geographical area that spans southern Morocco, southwestern Algeria and northern Mauritania in addition to Western Sahara proper. By contrast, Sahrawi political identity and the Sahrawi nationalist movement – later embodied by the Polisario Front – are a relatively recent phenomenon that emerged in Western Sahara’s colonial territory, constructed under and in opposition to the Spanish rule (Barreñada 2017, 381; Barona Castañeda 2015, 3). Contrary to Morocco, and in absolute adherence to the *uti possidetis* principle, the Polisario Front/SADR unambiguously stuck from the outset to a political/national definition of Sahrawi identity (Isidoros 2017, 303, 309), which involves a self-limitation of the parastate’s population to Sahrawis native to Western Sahara proper and their descendants (Mundy 2007, 278).

Another demographic particularity is that since 1975-1976 Sahrawis indigenous to Western Sahara have been divided into three broad categories, i.e. those who fled as refugees to Tindouf, those who remained in the Moroccan-annexed territory and those who have migrated elsewhere to become a diaspora mainly in Europe. Yet, the SADR as a parastate has endeavored to formally include all the three population groups under its formal jurisdiction, as shown by the existence of a Ministry of the Occupied Territories and the Saharawi Community Abroad within its government, although the constituencies entitled to vote in the elections for the SADR’s legislative branch, the Sahrawi National Council, are limited to the refugee camps (Wilson 2016, 206-209). Representatives from the “occupied territories” and the diaspora have also effectively participated in the Polisario Front’s Popular General Congress on an equal footing with their exiled counterparts since 2011 (Fernández-Molina 2015, 245). When it comes to the Sahrawi refugee population over which the SADR in practice rules, great ambiguity and controversy surrounds the current figures. The UNHCR and the World Food Programme estimated nearly 130,000 refugees in 1998-2000 and 100,000 in 2005, respectively (Zunes and Mundy 2010, 128), but in recent years the Polisario Front/SADR have strategically refused to either disclose their own data or allow the UN agencies to conduct a census within the camps for political, military and economic reasons (Isidoros 2018, 54-55, 147, 151) – mainly out of fear of seeing humanitarian aid and food rations cut.

As far as government and governance-in-exile over the refugee camps and their population is concerned, the role of the parastate of Western Sahara/SADR has traditionally been pervasive due to a strong political attachment to the principles of self-management and non-interference, as well as the aim to

normalize and “rehearse the state” (McConnell 2016) even within the “state of exception” (Agamben 1998). International humanitarian agencies and NGOs do not implement their aid projects there directly, but working through a relevant SADR ministry or the Sahrawi Red Crescent (Mundy 2007, 286). As put by Pablo San Martín (2010, 112): “From the early days of exile, the Frente Polisario organized health, education and food distribution committees not merely as a temporary management strategy for the camps, but primarily as a political and ideological strategy for progressively establishing the basis of a future Saharawi state.” In terms of political economy, due to the exceptional circumstances of material dispossession associated with exile, the SADR has never relied on any regular form of taxation from refugees, unless appropriation in the form of labor conscription is considered as such. All of this has been associated with the persistence of a single-party system where the often “indistinguishable fusion” of the national liberation movement – the Polisario Front – and the state – SADR – has led Alice Wilson (2016) to refer to this governing pair as the “state-movement”. The absence of other legalized party-like political actors corresponds to the same strategy behind constructing Sahrawi identity around achieving self-determination and excluding anything that might weaken that. The lack of liberal democracy has been justified by the precedence of the ultimate goal of achieving self-determination.

Despite all this, after a first decade when political life in the camps was strongly influenced by the revolutionary model of Muammar Gaddafi’s Libya (San Martín 2010, 116), a legitimacy crisis provoked by refugee protests in 1988, coupled with the 1991 ceasefire, led to an overhaul of the system aiming to make it less authoritarian. The parliamentarians of the SADR’s Sahrawi National Council started to be elected directly by the people in 1999 and heterodox contested elections are now regularly held in the camps, although multipartyism in the liberal sense continues to be absent (Wilson 2016, 117-120, 77-79, 207). Such evolution also forms part of an effort to demonstrate the international community that the Sahrawis are capable of governing and supportive of democratic mechanisms, which can be viewed as a strategy to seek “earned sovereignty” akin to that followed by other parastates (Williams and Pecci 2004; Scharf 2003). It is not unrelated either to the conditionality entailed by the dependence on international humanitarian aid for the provision of welfare services (education, health). In general, Western Sahara’s current combination of democratic self-determination aspirations, democratic discourse, sui generis political participation and representation mechanisms, and persisting illiberal structures bears resemblance to that of other parastates such as Kosovo, Nagorno-Karabakh, Abkhazia and South Ossetia.

#### **4. External sovereignty: partial forms of international recognition and the struggle over natural resources**

When it comes to the constitutive dimension of statehood and external or “international legal sovereignty” (Krasner 1999, 14-20), which is based on a polity being recognized as sovereign by other sovereign states, or in some cases by international organizations (Rossi this volume), the parastate of Western Sahara relies on three distinct partial forms of international (non)recognition, i.e. the recognition of the Polisario Front as a national liberation movement and conflict party, the recognition of the SADR as a sovereign state and the non-recognition of Morocco’s sovereignty claims over Western Sahara. The Polisario Front’s recognition was confirmed in 1979 by the UN General Assembly, which took its cue from the Organization of African Unity (OAU) in ratifying this group’s status as “the representative of the people of Western Sahara” which “should participate fully in any search for a just, lasting and definitive political solution of the question of Western Sahara”.<sup>9</sup> This resolution provided the Polisario Front with arguably fairly solid legal and political ground for its international engagement as both a national liberation movement and one of the two parties to the Western Sahara conflict involved in peace negotiations in subsequent decades.

Compared to the Polisario Front, the international recognition of the SADR as a parastate has always been more tenuous, yet far from negligible. This represents a substantial difference and strength in contrast with secessionist parastates. The fact that, as a “declarative” parastate, the SADR’s declaration of independence was not in violation of international law makes its existence significantly less contentious for the international community – and potentially more enduring in the long-run. The SADR has been recognized since its foundation by 84-85 UN member states, mainly from Africa and Latin America, with the former Yugoslavia and Albania being the sole European exceptions. However, almost half of these have later “frozen” or “withdrawn” recognition, leaving current maintaining diplomatic relations at around 40 sovereign states. Still, this constitutes a significant degree of what Deon Geldenhuys (2009, 25) calls “titular recognition”, i.e. “the wide formal acceptance (at multilateral level) of an entity’s *right* of or title to statehood (...) as in the cases of Palestine and Western Sahara”. Two qualifications must be noted, however. First, the SADR’s recognition and recognition freezing figures are volatile and contentious, and due to their continuous diplomatic outreach, there is no reliable source that can credibly determine its current status. Obtaining recognition “withdrawals”, especially in Africa and Latin America, has traditionally been among the top objectives of Moroccan foreign policy – similarly to the international strategy pursued by Serbia more recently in relation to the Kosovo issue. As such, rescinding recognition is not theoretically possible under international law, since the 1933 Montevideo Convention provides that the recognition of a state “is unconditional and irrevocable” (article 6).<sup>10</sup> In practice, this does not seem to apply to “declarative” parastates but only to the

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<sup>9</sup> A/RES/34/37 (1979), <http://www.un.org/documents/ga/res/34/a34res37.pdf>. Or ‘representative of the people of Western Sahara’ the following year, see A/RES/35/19 (1980), <http://www.un.org/documents/ga/res/35/a35r19e.pdf>.

<sup>10</sup> See <http://www.oas.org/juridico/english/treaties/a-40.html>.



secessionist ones, as constantly feared by Taiwan (Rossi this volume).<sup>11</sup> Also, some of the numbers invoked by Morocco and the SADR/Polisario Front are construed from inconsistent political declarations while, in legal terms, the question of intent constitutes the litmus test for state recognition, and “intention cannot be replaced by questionable inferences from conduct” (Hersch Lauterpacht cited in Ker-Lindsay 2015, 275).

The second qualification is that the international recognition of the SADR has always had a distinct non-aligned bias. No Western state has ever recognized this parastate. Significantly, though, the official position of global powers in general and Western actors in particular has been one of twofold non-recognition, whereby the non-recognition of the SADR is matched with that of Moroccan sovereignty claims over Western Sahara as long as the conflict is not solved. This is what has continuously frustrated Morocco’s longstanding ambition to obtain international recognition and *legalization* for its *de facto* annexation of the territory, the core objective of this country’s foreign policy. In any case, it is only non-Western and primarily African states that have formally recognized and consistently stuck to their recognition of the SADR, becoming its firmest allies. Besides Algeria and Libya, the latter currently include the continent’s two regional powers, Nigeria and South Africa, as well as about 15 more non-Francophone southern and central African countries.<sup>12</sup>

The same pattern extends to the SADR’s membership of international organizations. Admitting a contested territory or parastate into a state-based international or regional organization constitutes an acknowledged method of collective recognition, which has been termed “indirect collective recognition” but is still seen as possessing strong significance in terms of conferring statehood (Ker-Lindsay 2015, 274). Such has been the vital role played by the AU and its predecessor the Organization of African Unity (OAU) in relation to the SADR. The SADR obtained full membership of the OAU in 1982 and sent its first state delegation to an OAU summit in Addis Ababa two years later, in protest against which Morocco withdrew from the pan-African organisation. With this chair remaining empty for over three decades, in 2002 the SADR would become a founding member of the AU. All of this substantially strengthened the SADR’s “titular recognition”, at least at the African level (Geldenhuis 2014, 361), and allowed it to enter into international legal agreements as an AU member. Yet, ambiguity has remained as to the relationship between the AU’s indirect collective recognition and the stances of

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<sup>11</sup> An important difference between the Sahrawi and Taiwanese cases is that the international recognition at stake in the latter concerns who is the legitimate government of China, and not China’s statehood as such. Also, in the former case there is no either/or binary that makes rescinding recognition of the SADR necessarily equivalent to recognising Moroccan sovereignty over Western Sahara.

<sup>12</sup> South Africa’s late recognition of the SADR in 2004 was a severe blow to Moroccan foreign policy and provoked a long bilateral diplomatic crisis. Key SADR recognizers and allies in Latin America currently include Mexico, Cuba, Venezuela, Ecuador, Bolivia and Uruguay. See

[http://www.umdraiga.com/documentos/RASD/RECONOCIMIENTOS\\_DE\\_LA\\_RASD.htm](http://www.umdraiga.com/documentos/RASD/RECONOCIMIENTOS_DE_LA_RASD.htm).

its individual member states, which do not all recognize the SADR (see Ker-Lindsay 2015, 274). Morocco has in recent years sought to nurture and exploit these inconsistencies, wooing more and more African supporters, as part of a diplomatic offensive which has culminated with its historic return to the AU in 2017 – though at the price of accepting to coexist with the SADR in this forum (Hernando de Larramendi and Tomé-Alonso 2017). Besides the AU, the SADR only participates as a guest – not a member – in meetings of the Non-Aligned Movement and the New Asian-African Strategic Partnership. On the other hand, other regional organizations such as the Arab League are broadly supportive of Moroccan positions. The Arab Maghreb Union (AMU) has been in a coma with political dialogue frozen for two and a half decades owing to the rupture and lack of normalization of relations between Morocco and Algeria, which has been repeatedly fueled by the Western Sahara issue. Three out of the five AMU member states (Algeria, Libya and Mauritania) have recognized the SADR at different points in time, with Tunisia being the only one to have never done so besides Morocco.

One last way in which the parastate of Western Sahara/SADR has been recently trying to consolidate its declarative and constitutive statehood on the international level concerns the legal and political dispute over the Moroccan exploitation of the annexed territory's natural resources. This is part of a broader and increasingly effective “low politics” international strategy which also includes the denunciation of human rights violations committed by Morocco there – a card that several secessionist parastates have also been playing against their host states in order to gain foreign sympathy (see Caspersen and Stansfield 2011, 73-89). However, while human rights can be approached from a universalistic and status neutral perspective, the issue of natural resources is inherently associated with the legal status of and the sovereignty over the disputed territory (Fernández-Molina 2017b, 227-228). Western Sahara's natural resources include renewables such as sand, wind, water and fish, as well as non-renewables, primarily phosphate and oil (Zunes 2015, 392), all of which have been profitably exploited by Morocco in the 75% of the territory it controls since the late 1970s. Most notably, Morocco and Western Sahara together are the third largest producer of phosphates after China and the US, and more than one third of world phosphate exploitation is done by the Moroccan OCP Group (Trasosmontes 2014, 19; Allan 2016, 3), making the export of this mineral the largest source of income for the territory (Hagen 2015, 378). This demonstrates that Morocco's vested interests in Western Sahara go beyond intangibles such as sovereignty and nationalism, involving also a distinct economic benefit (White 2015, 340-342; Allan 2016, 1).

The SADR's grievances about the illegality of Morocco's exploitation and trading of these resources gained momentum following the 2002 Corell Report, a shorthand for the opinion issued by the UN Office of Legal Affairs on contracts signed by Morocco and foreign companies to explore for mineral resources in the annexed Western Sahara territory. Although these non-exploitative contracts in

particular were deemed “not in themselves illegal”, for the first time it was established that the people of Western Sahara legally retain “permanent sovereignty over natural resources” and must therefore be consulted about the exploitation and administration thereof. Moreover, any benefits from such exploitation must revert to them (Hagen 2015, 379). While the 2002 opinion was based on international jurisprudence concerning non-self-governing territories, years later Hans Corell himself went on to dispel legal ambiguities stating that “Western Sahara in reality is occupied by Morocco” (Torres-Spelliscy 2014, 242). In short, it has been made clear that international law prescribes that the exploitation of natural resources must benefit the Sahrawi people and respect their will (Soroeta Licerias 2016, 218). What has not been legally spelled out yet is the role that the SADR should play in authorizing access to the land as the parastate claiming constitutive sovereignty. At the same time, in an attempt to alleviate international legal concerns, the Moroccan authorities and the OCP Group have announced massive investments amounting to \$2,450 million for the period 2012-2030 in what they call the “Southern provinces” (Trasosmontes 2014, 23; Smith 2015, 273). The SADR and its supporters maintain that this is not directly benefitting the Sahrawi population, not even those living under Moroccan rule (Allan 2016, 13; Zunes 2015, 296).

None of this has prevented the Polisario Front/SADR from scoring several political and legal victories in the past decade. First, their international lobbying hand in hand with the NGO Western Sahara Resource Watch (WSRW) has been quite effective in making international companies and large-scale import investors aware that, in full respect of legal and ethical criteria, they should not sign any contracts with Morocco to exploit the Sahrawis’ natural resources without first consulting them (Hagen 2015). Second, in the domain of fisheries, in December 2011 the European Parliament rejected the protocol of extension of the 2006 fisheries agreement between the EU and Morocco on the legal grounds that it included the waters of non-self-governing Western Sahara without its direct benefits for the local population having been properly demonstrated – among other economic, environmental and developmental arguments (Fernández-Molina 2017b; Bouris and Fernández-Molina 2018, 317). Third, in relation to agricultural trade, EU courts marked a turning point in 2015-2016. In 2015, the General Court of the EU annulled the 2012 agricultural trade agreement between Morocco and the EU as far as its longstanding *de facto* application to Moroccan-annexed Western Sahara was concerned. One year later, the European Court of Justice (ECJ) took a step further and formally annulled this ruling based on the broader consideration that Western Sahara is not legally part of Moroccan territory and, therefore, none of the cooperation agreements between the EU and Morocco should be applied at all there (Ferrer Lloret 2017, 21; Flavier 2017, 4; Kassoti 2017a, 340).<sup>13</sup> Fourth, and going back to fisheries, in February 2018 another ruling from the ECJ has likewise concluded that the EU-Morocco fisheries agreement is

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<sup>13</sup> EGC ruling of December 10, 2015, Case T-512/12, *Front Polisario v. Council of the European Union*. CJEU ruling of December 21, 2016, Case C-104/16 P, *Council of the European Union v. Front Polisario*.

valid for the simple reason that it *not* applicable to the waters adjacent to the territory of Western Sahara.<sup>14</sup> Altogether, these cases are producing strong jurisprudence requiring the EU to start territorially differentiating between economic activities and products originating from the internationally-recognized Morocco and the Western Sahara territory it controls, as increasingly done with Israel and the occupied Palestinian territories.

In terms of Western Sahara's external sovereignty, the international recognition of the SADR as a sovereign state remains unaffected, but the international non-recognition of Morocco's sovereignty claims over Western Sahara has been substantially reinforced, which indirectly clears the way for the parastate to consolidate its declarative and constitutive statehood. In the eyes of Sahrawi nationalists, the struggle over Western Sahara's natural resources goes beyond their material value and is viewed as a new alternative way to unblock the path to sovereignty.

## 5. Conclusion

This article has examined the extent to which Western Sahara/SADR constitutes an outlier within the liminal universe of parastates. Due to its combination of a limited degree of control over the claimed territory and prevailing extraterritoriality in its *de facto* operation, it is contended that the SADR is better understood as a hybrid between a parastate and a state-in-exile, which may have contributed to its counterintuitive resilience. In comparative perspective, the SADR's main differences with other parastates lie in its non-secessionist origin, the current situation of foreign occupation of most of the claimed territory and the largely extraterritorial practice of what has been described as a "refugee state". On the other hand, similarities include the context of frozen conflict, an ineffective internationally brokered peace settlement, the presence of international peacekeeping forces, the role of global powers in prolonging the status quo and the parastate's backing by an external patron – in this case Algeria.

Overall, as a "declarative" parastate, the SADR's sovereignty primarily relies on external, "international legal sovereignty" rather than internal, "Westphalian" and "domestic" sovereignty (Krasner 1999, 3-25). In terms of internal sovereignty, the claimed territory of Western Sahara presents a dual identity as a non-self-governing and an occupied territory, which has pushed the parastate of the SADR into extraterritoriality – although its continuing control of the "liberated territory" remains vital for asserting declarative statehood. The SADR's claimed population is both limited *and* extensive to the Sahrawis native to Western Sahara proper and their descendants, which formally include those living in the Moroccan-annexed territory, the diaspora and the Tindouf refugee camps, yet in practice only the latter

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<sup>14</sup> CJEU ruling of February 27, 2018, Case C-266/16, *Western Sahara Campaign UK v Commissioners for Her Majesty's Revenue and Customs and Secretary of State for Environment, Food and Rural Affairs*.

are effectively governed by the parastate. The SADR's government/governance of the camps has been characterized by a high level of self-management in attempting to "rehearse the state" (McConnell 2016) even within a protracted "state of exception" (Agamben 1998). The Polisario Front/SADR have maintained a hegemonic role as a "state-movement" (Wilson 2016) within a illiberal political system, which has however been reformed and allegedly "democratized" since the 1990s with the aim to gain "earned sovereignty". Finally, as far as external sovereignty is concerned, Western Sahara combines a fairly solid international recognition of the Polisario Front as a national liberation movement with the SADR's weaker albeit not negligible "titular recognition" (Geldenhuis 2009, 25) as a state, which has a distinct non-aligned bias and has been vitally supported by its membership of the AU. In parallel, the longstanding non-recognition of Morocco's sovereignty claims over Western Sahara on the side of Western states has been further reinforced by recent legal-political developments on the dispute over the Moroccan exploitation of the annexed territory's natural resources.

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