

Western Sahara: Subtleties and Multiple Sources of Recognition for a Hybrid of a State-in-exile and a De Facto State

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1. Introduction

The Sahrawi Arab Democratic Republic (SADR) claiming the non-self-governing territory of Western Sahara is of such a unique nature as a contested state that it appears stronger in terms of constitutive statehood than of declaratory statehood. The reason for that is that it does not possess substantial control over most of the land it claims, which has long been occupied and annexed by Morocco, and it operates instead on a largely extraterritorial basis from the Sahrawi refugee camps on Algerian soil. In practice, the SADR functions as a hybrid between a state-in-exile and a de facto state, drawing international recognition from multiple overlapping sources.

This chapter provides a comparative insight into the particular features of Western Sahara/SADR as an outlier within the universe of contested states, and the small print of international recognition and statehood stemming from them. Following a historical background on Western Sahara's historical struggle for statehood, the conceptual debate will be addressed as to why the SADR escapes all of the usual categories, while sharing some features with de facto/quasi/unrecognised states on one hand and states-in-exile on the other. This will lead to consideration of the mixed effect that the combination of foreign occupation and extraterritoriality has on the SADR's statehood under international law. Next, the multiple territorialities of Western Sahara/SADR will be unpacked by discussing the effective situation of the Moroccan-annexed Western Sahara territory, the Algerian-based Sahrawi refugee camps where the Polisario Front and the SADR have their extraterritorial headquarters and primary area of governance, and the so-called Liberated Zone that the last two actors control in Western Sahara proper. Finally, these territorialities will be connected to three partially overlapping sources of international (non)recognition, i.e. the non-recognition of Morocco's sovereignty claims over Western Sahara, the recognition of the Polisario Front as a national liberation movement and a conflict party, and the partial recognition of the SADR as a sovereign state.

2. Western Sahara's historical struggle for statehood

Western Sahara is a former Spanish colony in North Africa. Lying on Africa's Atlantic coast, Western Sahara is bordered by Morocco to the north, Mauritania to the south and east, and Algeria to the northeast. It is comparable in size to the United Kingdom, or to the US state of Colorado. Much of the territory is characterised by low, rocky desert, with a few small mountains and oases. Historically, the territory's inhabitants have been Hassaniyya-speaking nomadic pastoralists who have come to be called Sahrawis; they are an Arab-Berber ethnic group. There is no precise territorial correspondence between the areas inhabited by ethnic Sahrawis and the political Western Sahara defined along colonial borders (Zunes and Mundy 2010: 92-93). Rather, people who broadly fit the ethnic definition of Sahrawi have historically lived in southern Morocco, Algeria, Mauritania and Mali as well as in Western Sahara. Nevertheless, the overwhelming majority of Western Sahara's pre-colonial inhabitants were Sahrawis, and Western Sahara exists at the centre of the traditional Sahrawi range. From 1884 to 1975, Western Sahara was a Spanish colony, existing for the first time as a fixed territorial unit with delineated borders. The Spaniards,

lacking the resources of adjacent colonial regimes such as France, mainly limited their control to coastal cities and enclaves, and for the most part allowed the desert interior to exist on its own. Although there were occasional clashes between the Spanish and Sahrawi nomadic groups, there were also instances of cooperation; Sahrawis served in the Spanish military, worked in cities, and sometimes participated in local politics (Hodges 1983).

By the 1960-1970s, amid a global drive towards decolonisation, Spain came under increasing pressure to relinquish its colonial hold on what was then known as Spanish Sahara, which was listed by the UN as a non-self-governing territory. Although the territory had a notional right to self-determination, Morocco aggressively pursued its own claim as part of a larger irredentist narrative invoking a historical 'Greater Morocco' which included parts of Algeria and Mauritania as well. Partly in response to Moroccan irredentism, Mauritania subsequently made its own claim on the territory. However, a fact-finding mission by the UN concluded that there was 'overwhelming support' among the population for independence under the leadership of the Polisario Front (*Frente Popular de Liberación de Saguía el Hamra y Río de Oro*), a Sahrawi nationalist movement founded in 1973. These three conflicting claims – Moroccan, Mauritanian, and Polisario – were brought before the International Court of Justice (ICJ). In a 1975 advisory opinion, the ICJ concluded that, while there existed 'legal ties of allegiance between the Sultan of Morocco and some of the tribes living in the territory of Western Sahara', 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' (International Court of Justice 1975) – a decision that Morocco contested launching the so-called Green March over the territory (Wilson 2016: 18-19).

Notwithstanding the ICJ opinion, Spain unilaterally withdrew from the territory later in 1975, partitioning it between Morocco and Mauritania. The Polisario Front immediately began a two-front guerrilla war, hoping to secure the territory for an independent Sahrawi state. Initially, Polisario's performance in the war was impressive for an outnumbered, outgunned guerrilla movement. Sahrawi knowledge of the deep desert and reliance on traditional hit-and-run tactics resulted in some spectacular raids deep into Mauritania or in southern Morocco. By 1979, unable to sustain the cost of a deeply unpopular war, Mauritania withdrew and made its peace with Polisario. Morocco, initially focused on retaining control of a series of coastal enclaves and a phosphate mine at Bou Craa, pivoted towards a novel counterinsurgency strategy. Starting with its relatively small area, Morocco constructed a defensive wall, or 'berm', which it gradually expanded outwards in concentric circles. While the berm did not entirely prevent Polisario raids, it did slow them down, as Sahrawi fighters had to take time to clear minefields or find ways around barriers, and gave Morocco more time to respond. By the mid-1980s, the wall had been pushed deep into the interior, and the war was at a stalemate (Hodges 1983). With the permission of the Algerian government, Polisario had set up a series of refugee camps just across the border in the Algerian province of Tindouf in 1976. Tens of thousands of Sahrawis migrated to these camps with the outbreak and the continuation of the war.

In 1991, with neither side able to make significant military progress, a ceasefire was brokered by the UN along with a Settlement Plan that provided for a self-determination referendum for the indigenous Sahrawi people, which was accepted by both parties – though with no prior agreement on the electorate entitled to vote. Not coincidentally, Morocco had been promoting since 1976 the settlement in the area of Western Sahara under its control of 200,000-300,000 Moroccan citizens, a significant part of which were actually ethnic Sahrawis from southern Morocco. This settlement

policy's original aim of 'Moroccanising' Western Sahara and creating demographic facts on the ground gained additional strategic value on the eve of the voter identification process conducted by the UN Mission for the Referendum in Western Sahara (MINURSO). In an attempt to secure a favourable electorate, Morocco sponsored over 100,000 applicants who claimed to be natives of Western Sahara but were eventually rejected by MINURSO (Jensen 2012: 89-90). The flood of new claimants made the referendum significantly more complicated; within a few years, it had effectively been abandoned, while Moroccan formal annexation and infrastructure development entrenched its occupation of the western three quarters of the territory.

Since that time, Morocco has continued to administer most of the territory of the former Spanish Sahara. The Polisario Front, having established the SADR as a state-in-exile, continued to control the easternmost part of their claimed territory in addition to the refugee camps around Tindouf in Algeria. The 1991 ceasefire between the two sides has largely held, turning Western Sahara into a frozen conflict (Chávez Fregoso and Živković 2012) where 'the violence stopped, but the underlying interests of the formerly warring parties have neither been abated nor addressed' (Perry 2009: 36; see Smetana and Ludvík 2018). Under Moroccan occupation, many Sahrawis experience violent repression and economic discrimination (Porges and Leuprecht 2016). Humanitarian conditions in the refugee camps are also challenging. Although a series of Sahrawi protest movements in the Moroccan-occupied territory have emboldened nonviolent Sahrawi resistance (Fernández-Molina 2015), the conflict appears entrenched, with little prospect of significant movement in the near future short of a return to war.

3. A hybrid of a state-in-exile and a de facto state

As a result of this background, the SADR shares important common features with what Scott Pegg calls 'de facto states' (1998), as well as with Pål Kolstø's 'quasi-states' (2006; see also Jackson 1993) and Nina Caspersen's 'unrecognised states' (2012) – territories/entities that have 'achieved de facto independence' and whose 'leadership is seeking to build further state institutions and demonstrate its own legitimacy' while lacking full international recognition as independent states (see also Caspersen and Stansfield 2011: 1-2). The SADR meets Pegg's definitional criteria of having an organised political leadership backed by popular support, the capacity to provide governance and governmental services to a certain population, the self-assigned capacity to enter into relations with other states and the aim to achieve widespread international recognition of its sovereignty (Pegg 1998: 26). However, contrary to most of the strange political creatures that are usually grouped in these three overlapping categories, the SADR does not possess substantial control over the territory it claims (Kolstø 2006: 725-726; Caspersen 2012: 8), three quarters of which have been de facto controlled and annexed by Morocco since 1976/1979. The second key difference is that the SADR has *not* been 'unable to achieve any degree of substantive recognition' from the international society (Pegg 1998: 26), for it has been recognised since its foundation by 84-85 UN member states and it currently maintains diplomatic relations with around 40 of these.

Western Sahara/SADR fits better but still strikes as being an atypical case within the wider conceptual universe of 'contested states' – a looser terms that leave the polities' territoriality aside and focuses instead on the 'internationally contested nature of their purported statehood' (Geldenhuys 2009: 3). This is because in this instance, and only somewhat like in Palestine, statehood contestation does not stem from secessionism but from occupation by a historically and legally separate neighbouring state in the context of deviant or thwarted decolonisation process.

Furthermore, the Moroccan occupation and annexation of most the Western Sahara territory has led the SADR to operate as a primarily extraterritorial state-in-exile (Wilson 2016: 10; see also McConnell 2016) from its operational base in the Tindouf refugee camps in south-western Algeria. The combination of foreign occupation and extraterritoriality has a mixed effect on the SADR's statehood under international law. On one hand, foreign occupation has reinforced it from the perspective of the constitutive theory of statehood, which emphasises criteria of legitimacy and external collective endorsement, i.e. recognition by other states – if only as a reaction against the perceived illegitimacy of Moroccan sovereignty claims. On the other hand, extraterritoriality undermines the SADR's statehood in terms of the declaratory theory prevailing in modern legal doctrine, which prioritises purely functional/effectiveness features such as the 1933 Montevideo Convention criteria (Oeter 2015; see Crawford 2006), and therefore the SADR's actual ability to govern the Moroccan-annexed territory. This being said, the SADR's extraterritoriality is not absolute due to its control over the easternmost 25% of Western Sahara proper – which Sahrawi nationalists refer to as their Liberated Zone, aware of its importance in terms of declaratory statehood. Also, in terms of population, the SADR institutionally reaches out to Sahrawis living under Moroccan control, as well as further afield, through its Ministry of the Occupied Territories and the Saharawi Community Abroad. This form of recognition is not just symbolic, even more so in the case of the Polisario Front, whose Popular General Congress grants all those Sahrawis political participation rights on an equal footing with their refugee counterparts, and includes a Commission of the Occupied Territories and the Intifada of Independence (Fernández-Molina 2019: 17-18).

Admittedly, the conceptual and comparative debate remains largely academic, for in the policy domain, labels such as *de facto*, quasi, unrecognised, contested state and so on are rarely applied to Western Sahara/SADR, which tends to go unclassified. For one, UN documents do not usually mention the state-like SADR as such, and avoid any description or labelling of Western Sahara beyond 'non-self-governing territory'. UN General Assembly and Security Council resolutions refer to the latter as simply 'Western Sahara' adding, especially since 2006-2007, a very diplomatic mix of 'self-determination' and 'political solution' language with the aim of pleasing both parties. For example, all of the recent UN General Assembly resolutions on the 'question of Western Sahara', such as the one passed in December 2018, identically refer in their preamble to the 'inalienable right of all peoples to self-determination and independence' while 'recognising that all available options for self-determination of the Territories are valid as long as they are in accordance with the freely expressed wishes of the people concerned (...)'. Based on this, they express support for the UN-led negotiation process negotiations 'with a view to achieving a just, lasting and mutually acceptable political solution, which will provide for the self-determination of the people of Western Sahara (...)'. (UN General Assembly 2018: preamble and paragraph 2). This last phrase is literally taken from Security Council resolutions (see e.g. UN Security Council 2018). In the case of the more detailed reports of the UN Secretary-General, the territorial object of the dispute is called 'Western Sahara' or simply 'the Territory'. More specific references to the different sites or territorialities of the conflict are made by distinguishing between 'east of the berm' (Polisario-controlled zone) and 'west of the berm' (Moroccan-annexed territory), or employing neutral geographical terms such as Laayoune (capital of the Moroccan-annexed territory), Tindouf (site of the Sahrawi refugee camps) or Rabouni (camp where most of the SADR administration is located) (UN Secretary-General 2018). When it comes to the European Union (EU), the dispute over Western Sahara has been sometimes categorised as one of the 'protracted conflicts' that pose a security challenge in the European neighbourhood – along with those in Israel-Palestine, the South Caucasus and Moldova/ Transnistria (European

Commission/High Representative 2011: 5). As will be discussed below, the most interesting common point in international policy discourse on this conflict is that the description of the Moroccan presence in Western Sahara as ‘occupation’ has virtually become taboo for Western actors and the UN.

4. Territorialities of Western Sahara

In other words, the multiple *territorialities* of Western Sahara need to be discussed in plural and as an essential requirement for understanding the subtleties of the recognition of the SADR as a state.

Western Sahara under Moroccan occupation

While the former Spanish Sahara is classified by the UN as a non-self-governing territory and therefore officially subject to a decolonisation mandate (San Martín 2010: 5), about three-quarters of the territory are currently under Moroccan control, formally annexed and administered as part of the kingdom’s ‘Southern Provinces’. No country officially recognises Morocco’s claim to Western Sahara. As a result, there is a limited international presence in Moroccan-annexed Western Sahara other than the MINURSO, an UN peacekeeping mission which originally exists to carry out the self-determination referendum but is now mainly tasked with monitoring the ceasefire on both sides of the berm. MINURSO, notably, is the only UN peacekeeping mission without a human rights monitoring mandate – attempts to include such a mandate from 2009 to 2013 were thwarted by Moroccan diplomacy and its supporters at the UN Security Council (Fernández-Molina 2016: 68-72). On the other hand, the Moroccan *de facto* control is reinforced and implicitly legitimated through international economic cooperation with Morocco over Western Saharan resources (fish, phosphates, etc.), including the series of such agreements between Morocco and the EU. The ongoing (at the time of writing) conflict between the European Commission, which has repeatedly shown a willingness to sign agreements with Morocco that include resources originating in Western Sahara, and the European Court of Justice, which has ruled that such agreements are illegal, is a point of intersection between *de facto* and *de jure* international politics (Porges 2018).

It is difficult to know how many Sahrawis indigenous to Western Sahara live in the Moroccan-occupied territory today. The total number of inhabitants is somewhere over half a million, with Moroccan settlers representing a majority – there have been few, if any, empirical surveys of the population in recent years, due largely to Morocco’s strict control of research carried out there. Rhetorically and legally, the Polisario Front/SADR has a claim on Western Sahara, both as its legitimate authority in the eyes of the UN and because Sahrawi nationalism is constructed around this territory. Diplomatically, messaging has tended to focus on the illegality of what they term ‘occupation’, and of trade agreements concluded with Morocco over resources originating in Western Sahara. A Polisario press release issued in response to the UN Security Council’s extension of the MINURSO mandate in October 2018, stated, in part,

The Non-Self-Governing Territory of Western Sahara has been illegally occupied by Morocco since 31 October 1975 (...). It is critical that the Security Council uphold unequivocally the legal status of the Territory and preserve its territorial integrity (...). The Frente POLISARIO – whose *raison d’être* is to uphold the inalienable and sacrosanct rights and national aspirations of the Sahrawi people – will accept nothing less than the

full respect for the inalienable right of our People to self-determination and independence (SPS 2011).

All available evidence suggests that there is considerable support for Sahrawi statehood among Sahrawis living under occupation – though it is, once again, difficult to know how many (Porges and Leuprecht 2016). Polisario/SADR's claim on Western Sahara has a discursive role even though the possibility of a Sahrawi state there in the short term is remote. This claim, and its legal backing, provides political legitimacy in the camps. Discursively, it has a complex relationship to Sahrawis living under occupation; the relationship between Polisario/SADR and Sahrawi resistance in the occupied territory certainly requires further research, but researchers should be careful not to uncritically elide these categories.

SADR in Algeria

Separately from the territory of Western Sahara, Polisario/SADR administers five refugee camps, an administrative town, and the desert around them in the Algerian province of Tindouf with the permission of the Algerian state authorities. Although Polisario exercises some sort of *de facto* sovereignty by delegation in the area immediately surrounding the camps, some security responsibilities are shared with Algeria. The population here is probably around 120,000 – the camp administration is reluctant to allow census-taking inside the camps. Figures run from 90,000 to 173,000; Oxfam has estimated 120,000 as a low-end figure between all camps (Porges' interview with Oxfam representative, Rabouni, 2016). Some population estimates use resource distribution in the camps such as food, fuel, and some other resources provided by the World Food Program (WFP), Oxfam, the UN High Commissioner for Refugees (UNHCR), and the Algerian government; while UNHCR bases its estimates on satellite imagery. Because some percentage of the population retains nomadic ties outside of the camps for part of the year, any particular population estimate is likely to be a snapshot rather than a definitive count (Porges' fieldwork notes, Tindouf, 2016; Wilson 2017: 84-85).

Sahrawi refugees in the camps may travel freely in Algeria, and Algerians may visit the camps with permission from the government. In some years, when areas around the camps are fertile, Algerian nomads may graze their herds around the camps and use the camp markets and water supplies. There is also some degree of movement between the Liberated Zone – the easternmost quarter or so of Western Sahara, which remains under Polisario/SADR control – and northern Mauritania, where another several thousand Sahrawi refugees live. Most Sahrawis live in the camps, and not in the Liberated Zone, for two reasons. First, crossing an international border, into Algeria, allows the population to be classified as refugees under the 1951 Refugee Convention, whereas those in the Liberated Zone would be internally displaced persons (IDPs). Refugee status allows for the provision of UNHCR/WFP humanitarian aid (since UNHCR has a minimal mandate for IDPs) and for various other rights and protection services pertaining to refugee status, but not directly extensible to IDPs (Porges' interview with Oxfam representative, Rabouni, 2016). Second, the initial camps, near Tifariti in the Liberated Zone, were subjected to napalm attacks by Morocco in 1975-1976 (Chamberlain 2005: 24). Placing the camps in Algerian territory makes Morocco less likely to attack them in the event of a war, as was the case in 1975-1991, for fear of provoking an Algerian response. Algeria's support for the Sahrawi nationalist project allows the refugees to leverage the international border for their cause.

Conversely, Polisario/SADR's presence in Algeria has limited international legal standing, and is entirely at the permission of the Algerian government. Polisario/SADR has no legal claim on the territory, although in practice, it controls the area around the camps – visitors from Tindouf will readily observe the replacement of Algerian military escorts with Polisario soldiers about halfway between the airport and Rabouni, the administrative centre of the camps. A government exists in the camps, complete with a parliament, local elections, redistribution, and so on (see Wilson 2016). The state-like functions of Polisario/SADR inside the camps are numerous: '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' (San Martin 2010: 112). In addition to food and fuel aid, the SADR receives some financial aid directly from Algeria, and thus has no need to directly tax its population, although as Wilson (2016) has noted, labour policies have some analogies to taxation and redistribution in the camps. Although Polisario/SADR claims Laayoune, in Moroccan-occupied Western Sahara, as its ultimate capital, Tifariti, in the Liberated Zone, is used as a temporary one. The main seat of camp governance, however, is within the camps, where most Sahrawi officials live. It is here that most diplomatic relations – including those with the African Union – are situated. Unlike in the occupied zone, the camps are a rich site of international activity (Isidoros 2018: 37-45). There are UNHCR and WFP offices, among many other NGOs and charities active in the camps, and MINURSO has a nearby site. From the vantage point of the camps, Polisario/SADR is a partially recognised state, and the governing structure of a series of refugee camps.

The Liberated Zone

Governance practices in the easternmost region of Western Sahara are somewhat understudied in the literature. Most researchers of the Western Sahara conflict give it a brief treatment but rarely depart, physically or conceptually, from the refugee camps. The area is remote and less safe than the camps, and the Polisario Front/SADR tends to limit access to it for those reasons. It nevertheless occupies an important place in the Sahrawi national project, and has been the site of a post-war restoration of nomadic activity (Volpato and Howard 2014; Wilson 2017). The Western Sahara territory is divided by the Moroccan berm, but the berm is not any sort of international border. The Liberated Zone's legal status is the same as the rest of the former Spanish Sahara – part of a non-self-governing territory from the UN's perspective – but it differs from the Moroccan-occupied territory in that its de facto administration is not Moroccan but rather Polisario/SADR.

The nomenclature is notable here. Polisario/SADR calls this the Liberated Zone, or 'free zone'. Moroccan literature tends to minimise its size, or deny its existence altogether. MINURSO consistently refers to it as 'east of the berm' without acknowledging Polisario's control. There is a buffer zone extending five kilometres east of the berm, in which neither Moroccan nor Polisario military personnel are permitted. MINURSO records several violations of this restriction every year by both sides, perhaps most notably the murder of a Sahrawi nomad by Moroccan soldiers in February 2016 (Porges 2017). Sahrawi nomads do routinely enter the buffer zone. Rhetorically, Moroccan literature often attempts to elide the buffer zone and the entire Liberated Zone – sometimes claiming that Morocco has deliberately left a narrow strip between its area and the Algerian border – although this is not the case, and the area is quite large, though its precise size is difficult to estimate (Volpato and Howard 2014). The population size is harder to estimate here than in any of the other territorial segments of the conflict. Some estimates place the population

around 30,000-40,000 (Sevillano 2010). There are several fairly substantial towns – most notably Tifariti – and there are many places in the territory with schools and hospitals. As with the camps, population estimates are complicated by a constant nomadic interchange between the camps, the Liberated Zone, and northern Mauritania. In fertile years, or at certain times of year, the population swells, and at other times it dwindles. The SADR’s Minister of the Liberated Zone estimated in an interview that about 8-10% of Sahrawis are permanently nomadic (Porges’ interview with SADR’s Minister of the Liberated Zone, Rabouni, 2016). Combining this figure with the territory’s sedentary population, Polisario military bases, and Mauritians entering the territory suggests that estimates of 30,000 are not outlandish.

Beyond MINURSO, international presence in the territory is virtually absent. During periods of flooding, UNHCR/WFP has occasionally provided limited aid in the Liberated Zone. NGOs and charities are also rare or absent. The Mauritanian train from Zouerate to Nouadhibou briefly passes through a corner of the Liberated Zone (with the permission of Polisario/SADR) so there is at least one international agreement which acknowledges the *de facto* status of this territory. Unlike the occupied zone, the Liberated Zone is unambiguously Polisario-friendly, with ubiquitous SADR flags and graffiti, and SADR checkpoints and administrative personnel visible in all major towns. The border between the Liberated Zone and Mauritania’s northern province of Tiris Zemmour is large and, because of the huge distances and low population density, difficult to control. Some degree of informal border-crossing is permitted to nomadic herders seeking pasture on either side. The most formalised crossing occurs at the Mauritanian town of Bir Moghreïn, with most of this cross-border movement facilitating ongoing passage to or from Zouerate. Although Sahrawis from the camps are permitted visa-free access to Mauritania, Polisario does monitor and control the transport of food aid, fuel, and livestock into Mauritania.

5. Three forms of international (non)recognition

The multiple territorialities of Western Sahara and the SADR are correlated with three distinct yet partially overlapping forms of international (non)recognition, which in order of strength are the following: the non-recognition of Morocco’s sovereignty claims over the territory of Western Sahara, the recognition of the Polisario Front as a national liberation movement and one of the two parties to the Western Sahara conflict, and the partial recognition of the SADR as a sovereign state.

Firstly, the international non-recognition of Morocco’s sovereignty claims over Western Sahara is a direct consequence of the territory’s official UN designation as a non-self-governing territory subject to a decolonisation process. Interestingly, Western Sahara is the only territory on the UN list of non-self-governing territories for which the ‘administering power’ box is vacant. This anomaly results from Spain having officially declared itself ‘exempt from any responsibility of any international nature in connection with the administration of the Territory’ since it vacated it in early 1976.¹ The administering power vacuum has stirred up legal controversy between those who deem the Spanish relinquishment of responsibility *de jure* untenable – arguing that the Madrid Accords violated article 73 of the UN Charter and failed to be endorsed by the UN General Assembly (Soroeta Licerias 2016: 208-209; see Soroeta Licerias 2014) – and proponents of the position that, in view of the facts on the ground, ‘Morocco should be classified as the *de facto* administrator of the territory’ (Torres-Spelliscy 2014: 236). In any case, even the latter argument refers to a *de facto* and in theory temporary situation. The bottom line in terms of legal sovereignty is that no country in the world has ever taken the step of formally recognising the Moroccan claim

to Western Sahara, including the many political supporters and economic partners of Morocco which in practice regularly contradict this position through the backdoor. This represents a failure of Moroccan foreign policy, whose foremost goal over the last four decades has been to obtain formal international recognition, that is *legalisation*, for the *de facto* annexation of this territory (Fernández-Molina 2016: 46).

A stronger albeit less consensual internationally delegitimising claim is the view that the Moroccan (military) presence in Western Sahara constitutes occupation. The UN General Assembly described it as such in two resolutions in the early years of the conflict (UN General Assembly 1979: paragraph 5; UN General Assembly 1980: paragraph 3). This means that, in addition to decolonisation 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), Western Sahara would be subject to international humanitarian law including the law of occupation (IV Hague Convention of 1907, IV Geneva Convention of 1949 and 1st Additional Protocol), and Morocco should be treated as an occupying state whose ‘hostile army’ exercises authority over a territory without title to sovereignty.ⁱⁱ However, although many international lawyers support this position arguing that the legal statuses of non-self-governing territory and occupied territory are not mutually exclusive (Wrange and Helaoui 2015: 40; see also Soroeta Licerias 2016: 231; Saul 2015), the politics of the conflict has made the word ‘occupation’ practically disappear from the diplomatic vocabulary of international powers and international organisations, including the UN. The exception that confirms the rule was Secretary-General Ban Ki-moon’s one-off reference to Western Sahara’s ‘occupation’ during a visit to the region in March 2016 (UN Secretary-General 2016), which led Morocco to accuse the UN of abandoning its neutrality and expel dozens of MINURSO staff in retaliation, amid an unprecedented diplomatic crisis (Reuters 2016; Porges 2016).

Secondly, the international recognition of the Polisario Front as a national liberation movement and conflict party was formally sanctioned by the UN General Assembly, following the lead of the Organisation of African Unity (OAU), in two resolutions of 1979 and 1980. The first of them described this group as ‘the representative of the people of Western Sahara’ and recommended that it ‘participate fully in any search for a just, lasting and definitive political solution of the question of Western Sahara’ (UN General Assembly 1979). The second one urged direct negotiations between Morocco and the Polisario Front, ‘representative of the people of Western Sahara’ (UN General Assembly 1980). The official two-party structure of the conflict was further ratified – and accepted by the parties themselves – with the Settlement Plan resulting from UN peacemaking efforts, which both Morocco and the Polisario Front agreed to in 1991 (see UN Secretary-General 1990; UN Secretary-General 1991). This act of mutual recognition run contrary to the Moroccan long-held position that Western Sahara would actually be a regional conflict with Algeria as the kingdom’s real contender – pulling the strings of the Polisario Front as a tool for its own pursuit of regional hegemony. The very labelling of the nature and geopolitical scale of the Western Sahara conflict has been a continuous bone of contention (Fernández-Molina 2017: 13-14). Rabat’s arguments about the regional nature of the conflict and the Algerian party-ness resurfaced following King Mohammed VI’s accession to the throne in 1999 and his gradual disengagement from the Settlement Plan/self-determination referendum roadmap. Thereafter, every UN attempt to convene negotiations has been met with Moroccan calls to bring Algeria to the negotiation table as a full-blown party (Reuters 2018), thereby distorting the conflict’s internationally recognised party structure.

Thirdly, when it comes to the international recognition of the SADR as a sovereign state, the balance sheet is certainly mixed but not close to zero as in the case of Pegg's de facto states (1998: 26). While having a weaker international standing than the Polisario Front, the SADR has been recognised since its foundation by 84-85 UN member states and continues to maintain diplomatic relations with approximately 40 of these. This represents a non-negligible level of 'titular recognition', which has been defined as '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' (Geldenhuys 2009: 25). Reasons for recognising the SADR have always been primarily normative in nature rather than driven by distinct political interests. The first of them lies in the *uti possidetis* principle of international law as applied to African decolonisation, i.e. enshrining the intangibility of state borders inherited from colonialism. The second one is based on anticolonialism and the view that the Moroccan annexation of Western Sahara constitutes an anomalous continuation of European colonial control, and therefore failed decolonisation, of what is often called 'Africa's last colony' – an argument that had strong resonance in the Non-Aligned Movement during the Cold War. The only purely interest-based motivation for recognising the SADR may have been at times the convenience, especially for some African states, of upholding good relations with a regional power and rich energy-exporter such as Algeria. More recently, after the turn of the millennium, Polisario/SADR have endeavoured to bring up to date their classical legal and anticolonial arguments by refocusing on the denunciation of Morocco's human rights violations and legally doubtful economic exploitation of the natural resources of the annexed Western Sahara territory. This novel 'low politics' international strategy (Fernández-Molina 2017: 227-228), which combines the parliamentary and judicial routes, has succeeded in provoking unprecedented diplomatic crises between Morocco on one hand and the UN, the US and the EU on the other (Fernández-Molina 2016: 68-72). At any rate, this has had a greater effect in terms of upholding the international non-recognition of Morocco's sovereignty claims over Western Sahara than in increasing the international recognition of the SADR as such.

In response, Moroccan foreign policy has tirelessly sought to persuade states in Africa and Latin America – the two main historical pools of Sahrawi statehood supporters – to 'withdraw' of at least 'freeze' their recognition of the SADR, even though article 6 of the 1933 Montevideo Convention establishes that the recognition of a state is 'unconditional and irrevocable'.ⁱⁱⁱ Moroccan efforts have proven to be successful in around half of the cases.^{iv} Two significant waves of recognition withdrawals have taken place in the late 1990s, after the new personal envoy of the UN Secretary-General for Western Sahara, James Baker, stepped up efforts to revive the conflict resolution process (Smith 2010: 39), and one decade later, following the launch of Morocco's Autonomy Plan for the disputed territory, surrounded by a vast diplomatic and lobbying campaign in 2007 (Fernández-Molina 2016: 63-64). At any rate, none of the recognition and recognition withdrawal figures invoked by the parties are fully reliable, for they have been continuously embroiled in the conflict's diplomatic and propaganda battles, and in some cases inferred from inconsistent political declarations, raising doubts in relation to the 'question of intent' which is critical to state recognition (Ker-Lindsay 2015: 275-276).

In any case, a clear pattern emerges from the list of past and present recognisers of the SADR, namely its distinct non-aligned bias. African members have always stood out as the most numerous. At present, they include the continent's two regional powers, Nigeria and South Africa; Algeria, Libya and Mauritania in the Maghreb; as well as about 15 more mainly non-Francophone, southern and central African countries. Particularly much talked-about and harmful to Moroccan interests was South Africa's recognition of the SADR in 2004, not only for Pretoria's

regional and global influence but also because of the out-of-season timing of the decision, two decades after most SADR recognitions. In this late case, the official justification of the decision invoked conflict resolution efforts and the need to reenergise the UN-led peace process, supported also by the African Union (AU): ‘The two countries reaffirm their commitment towards the implementation of the UN/AU Peace Plan for Western Sahara and consider that speedy holding of a just, transparent and democratic referendum of self-determination constitutes the only viable way which both parties to the conflict agreed to and which received the supports of the entire international community’, stated the joint communiqué of the ministers of Foreign Affairs of South Africa and the SADR (SPS 2004). In Latin America, the SADR is currently recognised by Mexico, Cuba, Belize, Honduras, El Salvador, Nicaragua, Panama, Venezuela, Guyana, Ecuador, Bolivia and Uruguay. Beyond Africa and Latin America, the list includes ten countries in various parts of Asia (Yemen, Syria, Iran, Afghanistan, India, North Korea, Cambodia, Laos, Vietnam and East Timor) and a handful of Oceanian microstates. The only two European states to have recognised the SADR, both in the mid-1980s, are the former Yugoslavia and Albania. In other words, no Western state as such has ever taken such step – just like the Soviet Union and its Warsaw Pact allies avoided it during the Cold War. The Western European country that has been the closest to this is Sweden, where the parliament passed a motion recommending to recognise the SADR in 2012, yet the government did not eventually enact it amid Moroccan threats of boycotting Swedish companies and products (Stitou 2015). Overall, the mainstream Western official position on the conflict is one of twofold non-recognition equally affecting both SADR and Moroccan sovereignty claims over Western Sahara.

As regards international organisations, where membership may provide contested states with ‘indirect collective recognition’ (Ker-Lindsay 2015: 274), the UN has never admitted the SADR to membership as a state in keeping with Western Sahara’s official status as a non-self-governing territory. The most relevant supporting actor and platform for the SADR has been the AU, along with its predecessor the OAU. The OUA’s receptivity was grounded in its foundational normative commitment to the eradication of colonialism in Africa and to the *uti possidetis* principle – two norms that favour Sahrawi statehood. The SADR accessed the OAU as a full member in 1982 and would act as a founding member of the AU twenty years later. This substantially reinforced its titular recognition, or the acknowledgement of its right statehood (Geldenhuys 2014: 361), in Africa and beyond – for instance, by enabling it to enter into international legal agreements as an AU member. In response, outrage over the SADR’s seating pushed Morocco to withdraw from the OAU in 1984 and to remain absent from this and the AU for over three decades, until 2017. At the same time, the AU’s indirect collective recognition of the SADR has never been matched by an overwhelming intergovernmental consensus among its member states. This is one of the many ‘instances of states being admitted into organisations even though some members may not recognise them’ (Ker-Lindsay 2015: 274).

In recent years, Moroccan foreign policy has striven to turn such ambiguity in its favour, working to persuade AU member states to disengage or rescind recognition from the SADR while paving the way for the kingdom’s much-publicised ‘return’ to the pan-African organisation in 2017. In this respect, Morocco’s diplomatic success has been only mixed as, in the end, its representatives to the AU have begrudgingly accepted to coexist with the Sahrawi ones instead of getting them expelled from this forum (Hernando de Larramendi and Tomé-Alonso 2017). Moreover, in legal terms, while it would be far-fetched to claim that Morocco’s accession to the AU entails implied recognition of the SADR, given the ‘clear intent of non-recognition’ displayed during the process, AU membership has created new obligations for the kingdom under the AU Constitutive Act,

which enshrines fundamental principles such as sovereign equality, respect for the borders of AU members, peaceful settlement of disputes between members, prohibition of the use of force, and so on (Banerjee 2017: 35-36). Aside from the AU, the SADR has remained consistently excluded from other relevant regional organisations such as the Arab League and the Arab Maghreb Union. It has only been invited to occasionally participate as a guest in summits of the Non-Aligned Movement and the New Asian-African Strategic Partnership.

6. Conclusion

The SADR shares some common features but remains an outlier within the categories of de facto states, quasi-states, unrecognised states and even contested states for three interrelated reasons. First, the contestation of its statehood does not originate from secessionism but from foreign occupation in the context of a deviant, unfulfilled decolonisation process. Second, its existence is less contentious for the international community than that of secessionist contested states because, unlike in the latter's case, its foundation was not in contravention of international law. Third, the SADR lacks substantial control over most of the territory it claims, i.e. the non-self-governing territory of Western Sahara as defined by the former colonial borders, which is largely occupied and annexed by Morocco, while the SADR operates on an essentially extraterritorial basis from the Tindouf refugee camps in Algeria. The combination of these three circumstances confers the SADR a hybrid identity between a state-in-exile and a de facto state, and has the mixed effect of reinforcing the SADR's statehood in constitutive terms (external recognition) while undermining it from a declaratory perspective (functional/effectiveness features). The small print of statehood and recognition in the case of Western Sahara and the SADR can only be understood in relation to their multiple territorialities, including the Western Sahara territory under Moroccan occupation, the Algerian headquarters and primary area of governance of the SADR, and the Liberated Zone controlled by the Polisario Front/SADR in Western Sahara proper. These territorialities are correlated with three partially overlapping sources of international (non)recognition, i.e. the non-recognition of Morocco's sovereignty claims over the territory of Western Sahara, the recognition of the Polisario Front as a national liberation movement and a conflict party, and the partial recognition of the SADR as a sovereign state.

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ⁱⁱⁱ See 'Convention on Rights and Duties of States', 26 December 1933, <http://www.oas.org/juridico/english/treaties/a-40.html>.

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