

Resolving Regional Conflicts: The Western Sahara and the Quest for a Durable Solution

November 6, 2013 presentation

Anna Theofilopoulou

Independent political analyst, writer, and former UN official and member of James Baker's negotiating team covering the Western Sahara conflict (1994-2006)

I would like to thank the Wilson Center for organizing this conference, which is very timely given the current long-term impasse in the search for solution; also because today, (November 6) is the 38th anniversary of start of the conflict, when Morocco annexed territory in 1975 with the Green March. We also need to remember that since that time, thousands of refugees have been living in Tindouf camps.

In 1991 the United Nations (UN), under the supervision of the Security Council, undertook the organization of a referendum of self-determination through a Settlement Plan offering one of two outcomes: integration with Morocco or independence and a winner-take-all result.

It has been over 22 years since the Settlement Plan and a ceasefire between the two parties, the Kingdom of Morocco and Polisario Front, went into effect in September 1991 and MINURSO, the UN mission for implementing the Plan and organizing the referendum, was created.

The conflict is still at an impasse and current Personal Envoy of the Secretary-General on Western Sahara, Christopher Ross, just completed another round of visits in the region where he explained to the parties and neighboring countries, Algeria and Mauritania, his intention to take a new approach which would involve consultations with each side and shuttle diplomacy rather than continue holding meetings.

Predictably both sides agreed but reiterated their long-standing positions on the issue.

I have been asked by the Center to address the prospects of the conflict's resolution and the role, if any, of the United Nations.

We are currently at the same impasse that was created in April 2004 when the Security Council weakened its support of the last proposal submitted by the UN in 2003, the Peace Plan for the Self-Determination of the People of Western Sahara which was prepared by the first Personal Envoy of the Secretary-General, James Baker, III, former U.S. Secretary of State.

In June of 2004, Mr. Baker resigned, telling Secretary-General Kofi Annan that after doing all he could, he had concluded that the conflict would not be resolved unless the parties were asked to do something they would not voluntarily agree to do.

However, Kofi Annan reassured the parties that the UN would continue with its efforts to find solution to the conflict. This continues being the case. What have we seen so far?

Since the start of the UN's involvement in 1991, different Secretaries-General, the Secretariat, Special Representatives in charge of MINURSO and Personal Envoys, with Mr. Baker's exception, have allowed the parties to control the process. They have succumbed to blockages and threat by both sides that they would walk out of the process if the UN did not meet their terms.

The initial Settlement Plan was vague and had structural problems that precluded its smooth implementation; it gave excessive power to manipulate its implementation to both parties.

At different times, both sides stalled the implementation of the Plan and the search for a solution if it did meet their objectives, independence for Polisario and integration for Morocco. Polisario did so during identification of potential voters for the referendum because of fear that MINURSO was approving too many Moroccan applicants; Morocco did the same after preliminary identification results showed that a clear victory in the referendum was not assured.

The Secretariat tried to accommodate the parties; however it did not have a strategy; nor was it clear about its aims; at times, the Secretariat has appeared more interested to continue process than the parties themselves.

This created a pattern that the Secretariat was unwilling or unable to break.

Over nine years after Mr. Baker's resignation, we are in same spot in terms of finding a solution; in addition, frustration has been building and the geopolitical situation on the ground both in Western Sahara and North Africa at large has been changing, adding new worrisome dimensions to conflict. (This has led to increasing frustration by youth on both sides due to socio-economic conditions, the Arab Spring in North Africa, and the creation of al-Qaeda in the Maghreb which brought terrorism into the equation.)

There are those who insist that the Settlement Plan is a legal document which could have been implemented.

I disagree and say that the Settlement Plan was conceived as a political instrument and that is how the parties and the Security Council saw it and treated it.

Turning to the role of Security Council:

The Council has been interested in hearing positive news and solutions to technical problems even if they did not help resolve the overall conflict. It has always been eager to approve solutions proposed by Secretary-General or the Personal Envoy but has refused to take a firm position and even ask the parties do something they do not want to do, claiming that the conflict falls under Chapter VI of the UN Charter. (For the Security Council to take action under Chapter VI, the consent of the parties to the dispute is required.)

After the solutions proposed by Mr. Baker (Framework Agreement, four options not requiring consent of parties) would not be accepted by the parties and/or the Security Council, in 2003, he

delivered the Peace Plan for the Self-determination of the People of Western Sahara, at the Council's request. A key aspect of the Peace Plan was the holding of a referendum of self-determination, after four years autonomy, with the options of independence, integration, or continuous autonomy. The Security Council unanimously supported the Peace Plan by resolution 1495 in July 2003.

In April 2004, after Morocco rejected the Peace Plan because of the independence option, France together with the United States and Spain (rotating member of the Security Council at the time) persuaded the rest of the Council to retreat from support of the Peace Plan and revert to strongly supporting a mutually acceptable solution, (although the Council had already been told by Mr. Baker in February 2002 that such a solution would not be possible due to irreconcilable positions of the parties).

In April 2007, Morocco submitted its own proposal and since then, we have had two proposals on the table:

Morocco's proposal offering a statute of autonomy to Western Sahara under Moroccan sovereignty; and

Polisario's proposal, presented just before Morocco's, which was based exactly on the Baker Peace Plan, with guarantees to Morocco in the event of independence.

The Moroccan proposal foresees negotiations with Polisario to agree on the modalities for its implementation; however autonomy under Moroccan sovereignty is the only outcome of this proposal after a referendum.

The key feature of the Polisario plan is a referendum of self-determination with the three options of the Baker Peace Plan.

Although many of the functions and responsibilities of the local Saharan authority and even of the Moroccan state in the Moroccan proposal are not all that different from those envisaged under the Baker Peace Plan during the four-year autonomy transition period, there is one key difference.

Under the Moroccan proposal, the population will be asked to vote only on the final autonomy statute. There will be no choice of options.

After Morocco submitted its proposal, the Security Council adopted resolution 1754 in April 2007, which has been the basis for the UN's work since then.

The resolution asks the parties to negotiate without preconditions with a view to achieving a just, lasting, and mutually acceptable political solution, which will provide for the self-determination of the people of the Western Sahara.

In response, a series of meetings ensued, 4 formal and 10 informal, where no agreement ensued, other than to continue meeting. There are problems with the resolution which explain why the conflict is still in a stalemate.

(a) The resolution does not define negotiations without preconditions; therefore each side interprets it its own way;

(b) It calls for a mutually acceptable political solution, which connotes compromise to satisfy both sides; this is contradictory to self-determination which entails choice by the people;

(c) In calling for self-determination, the resolution overlooks the Moroccan claim of sovereignty, which is not accepted by any state.

Also, because resolution 1754 called the Moroccan proposal “serious and credible,” Morocco sees it as having primacy. For Polisario, all that matters is that its proposal is on table and the resolution talks about self-determination.

However, through WikiLeaks we discovered that in March 2007, when Morocco submitted its autonomy plan to key members of the Security Council, France, the United States, the UK, Spain, and Germany (member of the Council at the time), they were not impressed by it. Nevertheless, during a meeting of political counselors of the above-mentioned states in Rabat, in response to the intensity of Morocco’s insistence, the decision was made to advise Morocco to proceed and submit its proposal to the UN and to support it despite its shortcomings. And at France’s suggestion, the proposal was singled out for praise in the resolution ignoring Morocco’s blatant violation of international law when claiming sovereignty over Western Sahara.

Where are we right now? As I mentioned before, exactly in the same spot as in June 2004 when Mr. Baker resigned.

The international civil society supports the Polisario position (based on legal arguments and ignoring the political reality). Also ignoring, or not knowing, that despite professions to legality, Polisario was willing to divide territory as suggested by Algeria in 2001.

The Polisario might have the legal case; however, Morocco has the political case. Personal Envoy Peter van Walsum, in his April 2008 briefing of the Security Council, asked the Council for guidance after saying that nothing approaching negotiations had happened in the four formal meetings. The Council did not respond to van Walsum’s request and kept repeating the language of resolution 1754 in subsequent resolutions.

In his recent visit to the region, Personal Envoy Ross proposed to the parties that he focus on elements that will respond to the two central aspects of the Council’s guidance, namely the substance of a political solution and the means of determining the freely expressed wishes of the people concerned.

In other words, he wants to clarify together with the parties the contradictory language of resolution 1754.

He assured the parties that their bottom-line interests of both sides would have to be addressed and satisfied, while it should also be recognized that neither party will obtain everything that it seeks.

The Moroccan side voiced unease about conducting discussions outside the framework of their proposal, whose “primacy” they insist that the Council has recognized.

The Polisario side confirmed readiness to participate in the new approach while also insisting that any negotiated solution must respect the inalienable right of the people of Western Sahara to self-determination through a three-option referendum.

I see this as an omen of both parties’ intent to continue exactly as they have; both reiterated their “bottom lines,” which are incompatible in the final outcome.

Nobody is showing any sense of urgency to search or demand an early resolution.

As events have shown, the Secretary-General has been reluctant to propose any solution of his own and the Security Council even more reluctant to impose one.

What purpose does continuation of the process serve when the parties to the dispute remain in their original positions? Have they shown any political will to act differently? An axiom of negotiations that a negotiator should not be more interested in continuing the negotiations than the parties to the dispute, seems to be forgotten in the case of Western Sahara.

Is continuation of process anything other than an attempt to provide cover to both sides vis-à-vis their internal constituencies and for the UN to show that it is not abandoning its responsibility toward Western Sahara?

We’ve seen Morocco’s constant efforts to humiliate Polisario and to remind everybody that its real argument is with Algeria and not with the “separatists” as it refers to Polisario. This does not serve any purpose other than worsen the relationship with Algeria, at this time at an all time low, and make the other side dig in on its heels.

Polisario’s constant reference to the legality of its position and the fact that it is being supported by the civil society does not serve any practical purpose either.

If the issue were to be resolved based on legal arguments, this would have happened. The fact is that politics have played a key role in the handling of the dispute and anybody denying this simply denies reality and perpetuates the plight of the refugees, already 38 years in the camps!

Both sides need a face-saving solution.

There are reports that Royal Advisory Council for Saharan Affairs, CORCAS, has proposed return to Baker Peace Plan with 10-year autonomy period then a referendum with choices of

integration with Morocco, independence, or a federal state. If true, this might be the opening for a resolution.

If not, if the UN wants to continue with its role, then:

- (a) Secretary-General (Personal Envoy) should meld the parties' two proposals and have the Security Council support the outcome; then demand that the parties find ways to compromise on their second best positions; or
- (b) UN should pull back and tell the parties that they are on their own until they are ready to really compromise.

A political decision is needed and it can only be taken by the Security Council and its key members.