



Dipartimento di Scienze Politiche Cattedra di Diplomacy and Negotiation

THE UN MEDIATION IN THE WESTERN SAHARA SCENARIO

RELATORE

Prof. Pasquale Ferrara

CANDIDATO

Elia Trevisan

Matr. 631962

CORRELATORE

Prof. Francesco Francioni

ANNO ACCADEMICO 2017/2018

INDEX

INTRODUCTION

1. HISTORICAL BACKGROUND

- a. The Origins of the Dispute
- b. The Madrid Accords and the Western Sahara War
- c. From the UN Settlement Plan onward

2. MEDIATION

- a. Theoretical Background
- b. Mediation Styles

3. JAMES BAKER (1997-2004)

- a. James Baker's Appointment And The Spirit Of Houston
- b. The Framework Agreement
- c. The Peace Plan
- d. Overall Assessment

4. PETER VAN WALSUM (2005-2008)

- a. The Beginning Of A New Mediation Style
- b. The Parties' Proposals
- c. The Manhasset Negotiations
- d. Overall Assessment

5. CHRISTOPHER ROSS (2009-2017)

- a. The Appointment and the Informal Meetings
- b. The Continuing Stalemate
- c. A New Approach
- d. Overall Assessment
- e. The Situation Nowadays

CONCLUSIONS

BIBLIOGRAPHY

ANNEXES

ABSTRACT

INTRODUCTION:

The conflict over Western Sahara has interested bunches of experts of international relations and diplomacy since the end of the war between Morocco and the Polisario Front in 1991. In this scenario, the United Nations plays a key role in trying to mediate and to solve, once for all, such dispute, which is still going on after almost thirty years.

The question at the basis of this thesis comes out rightly from these attempts of mediation made by different Personal Envoys of the UN Secretary-General throughout the years. Indeed, the aim of this paper is precisely that of answering to the following question: which mediation style have been mainly adopted by each of these Personal Envoys? Anyway, as it will be explained later, these mediators have often adopted more than one style, combining different strategy in order to achieve a mutually acceptable, definitive and long-lasting solution for the dispute over the final status of Western Sahara. However, in order to find an exhaustive answer to the question previously formulated, the analysis, which regards a specific time span from 1997 to 2017, will be structured as follows.

The first chapter will constitute an historical background of the entire sequence of events, going from the final years of Spanish to the Madrid Accords, from the birth of the Polisario Front to the end of the war between it and Morocco and the subsequent ceasefire. This first chapter will serve in order to know the historical background prior to the beginning of the on-going negotiations, conducted under the auspices of the United Nations.

The second chapter, instead, will provide a theoretical framework about what mediation is, how it is conducted, which kinds of mediation can be identified and, more important, which are the main styles that a mediator could adopt. With regards to this last point, the classification used is the one put forward by William Zartman and Saadia Touval in their book, *International Mediation: Conflict Resolution and Power Politics*.

The third chapter will regard the work of James A. Baker as the UN Secretary-General Personal Envoy for Western Sahara from his appointment in 1997 until his resignation in 2004. The analysis will focus on his mediation style along with his achievements and the difficulties he faced. Eventually, at the end of the chapter there will be enough space for a final assessment of his work.

The fourth chapter will follow basically the same structure of the third one, but the mediator studied will no more be James A. Baker, but rather the Dutch diplomat Peter van Walsum. He has

been appointed after Baker resignation in 2004, but he has remained in office for less than four years, since the UN Secretary-General Ban Ki-moon did not renew his mandate. As already done for Baker, the analysis will deal with van Walsum's approach to mediation and his mediation style, but also with his achievements.

The final chapter will regard the last UN Secretary-General Personal Envoy for Western Sahara: Mr Christopher Ross. Appointed in 2009, he has been the last mediator that has tried to solve the dispute over Western Sahara. As already done for his two predecessors, this paper will examine his mediation style, as well as the obstacles he has overcome in dealing with Morocco and the Polisario Front. Furthermore, there will be room to consider the influence that a changed international context had on Ross' activity.

Eventually, the conclusions will be helpful in order to reorganize the analysis and to answer the core question posed above. In addition, there will be a final comparison between the different mediation styles adopted by each of these UN Secretary-General Personal Envoys for Western Sahara.

In conclusion, it is important to stress the fact that this paper will exclude, on purpose, any examination of both the work of Mr Horst Köhler as the current UN Secretary-General Personal Envoy for Western Sahara and the fisheries deal between the European Union and Morocco. With regards to the former, it is surely too soon to analyse correctly the mediation style of Köhler since he took office basically only one year ago. Anyway, there will be a quick mention regarding his work in the final section of the fifth chapter. With regards to the latter, there will not be any reference to the role of the EU in the negotiations because otherwise there would have been a risk of going off topic.

CHAPTER 1: HISTORICAL BACKGROUND

THE ORIGINS OF THE DISPUTE

Until 1975, Western Sahara was part of the Spanish colonies and was named Spanish Sahara. Indeed, the crown of Madrid detained this territory since 1884 when, at the famous Berlin Conference, all the European powers agreed upon the establishment of a Spanish protectorate over the territories of Segui El Hamra and Rio De Oro. Soon, riots and uprisings erupted and Spain was not able to maintain an efficient control over these areas, mainly because the Sahrawi tribes used guerrilla tactics and enjoyed a massive popular support.

After the Second World War and the establishment of the United Nations, Spain, as well as the other colonial countries such as France and Great Britain, found many difficulties in maintaining its colonies while surviving in a new international arena based on the ideals and principles dictated by the UN Charter, especially in Article 73¹ and Article 74². Since its founding, the United Nations promoted the development of forms of self-government in the territories administered by foreign countries enjoying a mandate³ on those territories. It has been estimated that, in 1945, almost one third of world population lived in those areas under trusteeship.

¹ UN Charter, Article 73, Chapter 11: *“Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end:*

a. to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses;

b. to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement;

c. to further international peace and security;

d. to promote constructive measures of development, to encourage research, and to co-operate with one another and, when and where appropriate, with specialized international bodies with a view to the practical achievement of the social, economic, and scientific purposes set forth in this Article; and

e. to transmit regularly to the Secretary-General for information purposes, subject to such limitation as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories for which they are respectively responsible other than those territories to which Chapters XII and XIII apply”.

² UN Charter, Article 74, Chapter 11: *“Members of the United Nations also agree that their policy in respect of the territories to which this Chapter applies, no less than in respect of their metropolitan areas, must be based on the general principle of good-neighbourliness, due account being taken of the interests and well-being of the rest of the world, in social, economic, and commercial matters”.*

³ In this sense, the United Nations Charter foresaw, in Chapter XII, an International Trusteeship System monitored by the Trusteeship Council. The areas monitored were known as trust territories, which were either former Mandates of the League of Nations or colonies of the countries defeated during the Second World War.

As time went by, the process of decolonization continued and new states originated from trust territories. However, a new intervention by the UN was necessary in order to promote and to encourage this change. Therefore, the General Assembly adopted, on 14th December 1960, the Resolution 1514 known as the “Declaration on Decolonization” which contains several provisions in its paragraphs: *“The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation [...] Immediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or color, in order to enable them to enjoy complete independence and freedom”*⁴.

Spain, together with the other countries to whom a trusteeship mandate had been granted, soon became subject to international pressure in order to abandon its protectorates in Africa. However, even before UN Resolution 1514 was adopted, Morocco, one of the first African countries to have gained independence in 1956, began claim the regions of Segui El Hamra and Rio De Oro since they had been part of its pre-colonial expansion. The newly born state of Morocco decided also to support rebellions within some Spanish enclaves such as the city of Ifni⁵ or that of Tarfaya, but also small towns in Spanish Sahara. In this context, the Moroccan Army of Liberation played a key role. These scrambles were solved with the intervention of France alongside Spain, even if Madrid decided to give the city of Villa Bens and the region of Cape Juby to the Moroccans. Indeed, Morocco, since it was a newly born state with internal and societal difficulties with no chance to win an open war against Spain, decided to reach an agreement with Madrid that prohibited it to give support to the rebels in the Spanish enclaves under attack. This arrangement was formalized by the Cintra Agreements on the 1st April 1958.

Along the Sixties, tension between Spain and Morocco remained really high with king Hassan II advancing further claims on what was called Spanish Sahara. He also put pressure on Madrid by asking the United Nations to include the territory of Western Sahara in the list of Non-

⁴ UN General Assembly Resolution 1514 (1960).

⁵ Ifni was a city on the Atlantic Ocean coast controlled by Spain. In this context, the intervention by the Moroccan Army of Liberation played a key role in provoking the so-called Ifni War.

Self-Governing Territories⁶. Eventually, Morocco obtained the insertion of this area in the list in 1963.

The United Nations also continued to push Spain to quickly decolonize Western Sahara and the city of Ifni. In 1965 the General Assembly adopted the resolution 2072 by which it requested “[...] the Government of Spain, as the administering power, to take immediately all the necessary measures for the liberation of the Territories of Ifni and Spanish Sahara from colonial domination and, to this end, to enter into negotiations on the problems relating to sovereignty presented by these two Territories[...]”⁷.

Because of Spain’s unreceptiveness, the UN General Assembly adopted, the following year, resolution 2229 which reiterated basically the requests previously made in resolution 2072, but adding the invitation for Spain “[...] to determine at the earliest possible date, in conformity with the aspirations of indigenous people of Spanish Sahara and in consultation with the Governments of Mauritania and Morocco and any other interested party, the procedures for the holding of a referendum under United Nations auspices with a view to enabling the indigenous population of the Territory to exercise freely its right to self-determination and, to this end: a) To create a favorable climate for the referendum to be conducted on an entirely free, democratic and impartial basis, by permitting, inter alia, the return of exiles to the Territory; b) To take all the necessary steps to ensure that only the indigenous people of the Territory participate in the referendum; c) To refrain from any action likely to delay the process of the decolonization of Spanish Sahara; d) To provide all the necessary facilities to a United Nations mission so that it may be able to participate actively in the organization and holding of the referendum. [...]”⁸.

As an indirect effect, when it was clear that Spain was not so interested in holding a referendum in Western Sahara, Morocco and Mauritania, which had welcomed quite positively resolution 2229, resumed in claiming their sovereignty rights over that territory.

Even though the Spanish government did not already foresee the institution of a referendum, it envisaged the possibility to give more autonomy to its colonial territory in Segui El Hamra and Rio De Oro. Indeed, already in 1967 Spain decided to create the Djema'a⁹, a sort of legislative body with no decision-making capacity composed by representatives of Sahrawi tribes elected among

⁶ This catalogue had been redacted by the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, better known as the Special Committee on Decolonization, established in 1961.

⁷ UN General Assembly Resolution 2072 (1965).

⁸ UN General Assembly Resolution 2229 (1966).

⁹ It existed since the Middle Age as the fundamental societal apparatus of each Sahrawi tribe. This system disappeared during the colonial era.

different candidates. However, this Djema'a was not so liberal in the sense that its decisions were not really effective and the candidates for the elections were coopted and selected by the Spaniards. This system was aimed both at relaxing Spain's relations with the UN and at legitimizing the Spanish rulers, in whose hands laid the real effective power.

The adoption of the resolution 2229 also had the indirect effect of stimulating the born of civil society movements of protest. However, in 1967 the situation got worse when a pacific protest arose in Western Sahara. It was feed by the existing Movement for the Liberation of Saguia el Hamra and Wadi el Dhahab¹⁰, a covert group led by the teachings of a Sahrawi journalist named Muhammed Bassiri who aimed at obtaining the self-determination of Western Sahara and its independence from the Spanish rule. After years of proselytism under secrecy, on the 17th June 1970, the movement decided to show itself to the public opinion by peacefully organizing a demonstration in Zumla, a district of El Aaiun, in order to request Spain to agree to their objectives (listed in a petition signed by many people) of self-determination and independence.

However, Madrid responded negatively and ordered the dispersion of this demonstration and the detention of the protesters. Soon, a riot broke out and the Spanish government replied with brutal repressive measures, shooting at several people, arresting many protesters and even killing the leader of the movement, Bassiri. This episode of cruel violence, later named the Zumla Intifada, was condemned by Morocco and the other bordering countries. Eventually, it served as an evidence for the Sahrawi people that the objectives aimed by the Movement for the Liberation of Saguia el Hamra and Wadi el Dhahab were not possible to be achieved through the use of peaceful means. Therefore, the anti-Spain resistance and the Sahrawi nationalists acknowledge that a military formation was needed and this propelled to the formation of the Polisario Front in 1973.

This liberation movement was formally founded on the 10th May 1973 with the name of "Popular Front for the Liberation of Saguia el-Hamra and Río de Oro" in a small village on the border between Mauritania and Western Sahara¹¹. It had a linear and hierarchical structure with its apex in the person of the Secretary General, supported by a nine-member executive committee and then there were several different sections with specific political and military responsibilities.

The first military act of this new organization was carried on against a Spanish outpost in El-Khanga. The Polisario troops, led by the Secretary General Brahim Gali and his right hand El-Ouali Mustapha Sayed, used guerrilla tactics in order to fight against the Spanish rulers of Western Sahara.

¹⁰ Also known in Arabic as Harakat Tahrir.

¹¹ The correct location was Ain Bentili.

Soon, the actions perpetuated by the Polisario members generated an international reaction by Algeria, Morocco and Mauritania, that held a tripartite meeting in Agadir on 23rd and 24th July 1973 and expressed their point of view in a joint statement saying: *“The three Heads of State devoted special attention to the issue of the Sahara which is still a Spanish colony. They reiterated their commitment to the principal of self-determination and they pledged to keep an eye on its implementation. Self-determination should be implemented in a framework which ensures that the free will of the people of the Sahara prevails in accordance with pertinent UN resolutions”*.

As time went by, the military operations carried on by the Polisario Front proved the weakness of the Spanish army in years of political turbulence in Madrid. Indeed, General Francisco Franco's health conditions deteriorated quickly. In the meantime, from 1973 to 1975 the Polisario Front grew sharply in membership and improved a lot in terms of military capabilities and equipment and the number of its attacks against Spanish outposts or garrisons increased a lot. In a brief period of time the Polisario Front guerrilla was directed not only against military settlements such as Adjedjimat, Tifariti, Guelta and Bir Lehmar, but also against civilian and economic infrastructures, for instance against phosphate mines in Bou Craa or the transport routes that connected remote military outposts and harbors.

At the same time Polisario perpetuated its raids against Spanish rulers, Morocco¹² and Mauritania increased their claims of sovereignty over the territory of Western Sahara. This escalation of pleas was also due to the fact that Spain, on the other side, announced in September 1973 that it would have granted territorial autonomy and (gradually) the right for self-determination to the Sahrawian people.

In order to do so, the Spanish authorities basically dismissed the Djema'a and created another political organization (granted with more effective power than that of the Djema'a): the Partido de Unión Nacional Saharaui (PUNS). It was composed by former members of the Djema'a and it was the only political party tolerated by Spain, except for the Falange Española¹³. In this sense, the Spanish rulers believed that it would have given more legitimacy to their colonial rule and, at the same time, it would have drained support from the Polisario Front. Indeed, the PUNS pushed for more autonomy and the implementation of the right for self-determination, but its members (mainly because they were in accordance with the Spanish authorities and collaborated with them) did not foresee the use of military violence in order to achieve these goals and this was the most visible difference between the PUNS and the Polisario. Moreover, from the last months of

¹² In this context it could be mentioned that Spain decided to return the city of Ifni to Morocco in 1969.

¹³ The Falange Española Tradicionalista y de las Juntas de Ofensiva Nacional Sindicalista (FET y de las JONS) was the only legal party during Franco's regime in Spain.

1973 until spring 1974, Madrid, considered that its control over Western Sahara was more and more precarious thanks to the Polisario guerrilla, began to open talks with its leaders¹⁴.

Since, for the UN, these efforts by the Spanish Government to lessen its control over Western Sahara were not enough, in August 1974 Spain, after having delayed for years the organization of the referendum in Western Sahara (requested by the UN Resolution 2229), promised to hold it in the first months of 1975. In this perspective, a census was conducted in order to identify who had the right to vote for this referendum. Since the very nature of Saharawi people was nomadic and thus the majority of them lived in tribes with no stable settlement, Spain had some difficulties in conducting this census. Eventually, it resulted that 95,058 individuals were granted the voting rights.

Morocco, which was always in favor of this referendum, changed its position when it realized that Sahrawians would be asked to choose between independence or not and not between being ruled by Spain or by Morocco. Therefore, in September 1974 king Hassan II decided to invoke the intervention of the International Court of Justice, but only with an advisory proceeding, so ending with non-binding decisions. Accordingly, the UN General Assembly adopted the resolution 3292, postponing the referendum and requesting the advisory opinion of the International Court of Justice with regards of two specific questions: *“Was Western Sahara at the time of colonization by Spain a territory belonging to no one (terra nullius)? And, should the majority opinion be “no”, the following would be addressed: What were the legal ties between this territory and the Kingdom of Morocco and the Mauritanian entity?”*¹⁵.

At the same time, the United Nations decided, in May 1975, to send an investigation team¹⁶ to gather information on what was exactly going on in that area and on how to determine the rightfulness of territorial claims by all the countries interested. The inquiry concluded that the Polisario Front was not a terrorist organization, but a liberation movement¹⁷, even though they had been supported by Libya¹⁸ with armaments, equipment and other kinds of resources.

More important, the mission realized that the Sahrawians were strongly in favor of independence, while few were those favorable to be administered either by Spain, Morocco or

¹⁴ A meeting between Pedro Cortina y Mauri (Minister of Foreign Affairs of Spain) and El-Ouali Mustapha Sayed was organized in Algiers in July 1975.

¹⁵ UN General Assembly Resolution 3292 (1974).

¹⁶ The three members of the team (Simeon Aké, UN ambassador of the Ivory Coast; Marta Jiménez Martínez, a Cuban diplomat, and Manouchehr Pishva, from Iran) had several meetings with all the parties interested in the dispute.

¹⁷ John Mercer: *The Sahrawis of Western Sahara*. pp. 9

¹⁸ The leader of the Polisario Front, El-Ouali Mustapha Sayed was also invited to a meeting of the Pan African Youth Movement in Benghazi, Libya in April 1974.

Mauritania. In this sense, several public demonstrations in different cities were set up by both the Polisario Front and the PUNS in order to show to the UN mission that they held popular support. However, the UN emissaries noted that the PUNS had not the same approval with respect to the Polisario Front¹⁹, even though they both asked for independence (although the PUNS envisaged a softer approach).

Furthermore, the UN mission report, published on 15th October 1975, was useful also to the International Court of Justice for its pronouncement, which was published one day later. In its opinion, the ICJ affirmed that, even though Morocco and Mauritania had historical links with the territory of Western Sahara²⁰, these links were not sufficient in order to grant the sovereignty rights over this territory: *“The materials and information presented to the Court show the existence, at the time of Spanish colonization, of legal ties of allegiance between the Sultan of Morocco and some of the tribes living in the territory of Western Sahara. They equally show the existence of rights, including some rights relating to the land, which constituted legal ties between the Mauritanian entity, as understood by the Court, and the territory of Western Sahara²¹. On the other hand, the Court's conclusion is that the materials and information presented to it do not establish any tie of territorial sovereignty between the territory of Western Sahara and the Kingdom of Morocco or the Mauritanian entity. Thus the Court has not found legal ties of such a nature as might affect the application of resolution 1514 (XV) in the decolonization of Western Sahara and, in particular, of the principle of self-determination through the free and genuine expression of the will of the peoples of the Territory”²².*

After the publication of this opinion by the International Court of Justice, the countries involved reacted differently to the decision. For instance: Spain welcomed it very well, Mauritania regarded it as quite positive, while Morocco only acknowledged the first part of the decision (which affirmed the ties²³ between Morocco and Western Sahara. Indeed, in the very same day the International Court of Justice published its opinion, king Hassan II ordered the mobilization of the army near the border with Western Sahara and later announced the organization of a peaceful march through it. In a couple of weeks enthusiasm among Moroccan people grew rapidly, while the

¹⁹ United Nations Visiting Mission to Spanish Sahara, 1975, General Assembly, 30th Session, Supplement 23, UN Document A/10023/Rev, p. 67: *“On 13 May, in El Aaiun, the Mission attended the largest of the demonstrations, organized by the Frente POLISARIO, which was reported in the press to have amounted to 15,000 people.”*

²⁰ Which therefore was not a *terra nullius* at the time of Spanish colonization as asked by the first question posed by the UN General Assembly.

²¹ More specifically, the ICJ voted 14 to 2 in favour of the existence of such ties between Morocco and Western Sahara and voted 15 to 1 in favour of the existence of such ties between Mauritania and Western Sahara.

²² ICJ Reports (1975) p. 68, par. 162

²³ These ties, from Morocco's point of view, were proved by the connections between the Saadi kaids and some tribes of Western Sahara.

announcement of this march generated fears both in Spanish authorities and in Sahrawians. Spain affirmed its willingness to defend its possessions in Western Sahara and asked the United Nations Security Council to block the Moroccan initiative. The UNSC on 22nd October 1975 requested, with Resolution 377, the intervention of the Secretary General for consulting the parties interested in the dispute and asked them to operate self-restrain.

However, since Morocco was strongly convinced of its action and Madrid was resolute, the tension in the Western Sahara scenario reached unprecedented levels. In different occasions Spanish authorities²⁴ warned Morocco not to proceed in its initiative, but Moroccans demonstrated their commitment in regaining Western Sahara and continued to prepare their march, which was set to take place on November 6. In this hostile spirit, the leaders of the PUNS and those of the Polisario Front demanded Spain to block Morocco's invasion.

Consequently, the UN Security Council was urgently convened and adopted two resolutions, the first one (Resolution 379 of 2nd November) asking the parties to avoid unilateral actions which may escalate tension in the area, the second one (Resolution 380 of 6th November) deploring the march and requesting Morocco to immediately withdraw from the action²⁵.

By the way, king Hassan II did not back up and on 6th November 1975 hundreds of Moroccans crossed the border with Western Sahara backed by the Royal Moroccan Army, who had penetrated in eastern Saguia El Hamra previously. Polisario Front tried to block this invasion but its members were too few for countering the huge amount of Moroccans²⁶ taking part in the so-called Green March. Soon this initiative, in its logistic dimension, proved to be prepared by Morocco months and months earlier than the ICJ opinion publication. Moreover, it was promptly dominated by religious sentiment. Indeed, king Hassan II, who had never been considered a champion of Islam up to that moment, began to be regarded as an Islamic paladin. He exploited the great religious meaning that the Moroccans had given to that initiative, so he began to call the participants "mujahedeen" (divine fighters), who must pacifically²⁷ take away Islamic territories from the Spanish colonizers.

²⁴ Prince Juan Carlos visited El Aaiun on November 2 and affirmed: "Spain would fulfil its commitments in Western-Sahara" sending a clear message to Morocco. On 5th November, Spanish governor of Spanish Sahara (General Gomez de Salazar) stated that: "the Spanish military would perform its duty and would face the participants of the march if they tried to cross the line of defence couple of kilometres from the border".

²⁵ UN Security Council Resolution 380 (1975): "*The Security Council [...] deplores the holding of the march; calls upon Morocco immediately to withdraw from the territory of Western Sahara all the participants in the march [...]*".

²⁶ It has been estimated that almost 350,000 Moroccans participated in the Green March.

²⁷ He encouraged the participants saying: "May the sacred book of Allah be our only weapon in this fight"

On the other side, while Polisario Front tried to block the invaders, Spain did not counteract, even though local Spanish authorities were willing to do so. However, in Madrid things went bad when Francisco Franco got ill and suffered from heart attacks until he went into coma and died on 20th November 1975. In a time of political turmoil in their homeland, Spaniards in Western Sahara remained for weeks without any clear order on what to do. In the weeks prior to Franco's death, the new king Juan Carlos and the President of the Council of Ministers Arias Navarro acknowledged that a conflict would have had disastrous consequences for the country²⁸, hence they opted for a cautious diplomatic strategy.

Therefore, in a few days, Morocco started secret negotiations²⁹ with Madrid (and with the participation also of Mauritania). Morocco's Minister of Foreign Affairs Ahmed Laraki made clear that if Spain had supported the formation of an independent state of Western Sahara, Morocco would have advanced claims over the Spanish enclaves of Ceuta and Melilla. On 9th November, king Hassan II ordered the end of the Green March since it had achieved the hoped-for goals. Participants were offered land compensations in Western Sahara in exchange for their retreat.

In the meantime, the Spanish Foreign Legion operating in Western Sahara and the Spanish police began a round of arrests of local supporters of Sahrawi independence, while the Spanish government set up the *Operación Golondrina*, namely the evacuation plan from Western Sahara. The departure of Spaniards from Saguia El Hamra and Rio De Oro started very soon and was carried on orderly so that by mid-November 1975 almost no Spaniard had remained.

THE MADRID ACCORDS AND THE WESTERN SAHARA WAR

On 14th November 1975 Carlos Arrias Navarro (Spain), Ahmed Osman (Prime Minister of Morocco) and Hamdi Ould Mouknass (Foreign Affairs Minister of Mauritania) signed the Madrid Accords, expiring Spain's presence in Western Sahara. These accords, which were actually a declaration of principles and were never reported in the *Boletín Oficial del Estado*, affirmed in 6 points that:

“On November 14, 1975, the delegations lawfully representing the Governments of Spain, Morocco and Mauritania, meeting in Madrid, stated that they had agreed in order on the following principles:

²⁸ At that time, Morocco was one of the most important trade partners for Spain, which was suffering from an economic crisis. A war against it would have had terrible economic consequences and it would have caused also economic retaliations from other Arab states.

²⁹ These negotiations were made public on 11th November.

1. *Spain confirms its resolve, repeatedly stated in the United Nations, to decolonize the Territory of Western Sahara by terminating the responsibilities and powers which it possesses over that Territory as administering Power.*
2. *In conformity with the aforementioned determination and in accordance with the negotiations advocated by the United Nations with the affected parties, Spain will proceed forthwith to institute a temporary administration in the Territory, in which Morocco and Mauritania will participate in collaboration with the Djema'a and to which will be transferred all the responsibilities and powers referred to in the preceding paragraph. It is accordingly agreed that two Deputy Governors nominated by Morocco and Mauritania shall be appointed to assist the Governor-General of the Territory in the performance of his functions. The termination of the Spanish presence in the Territory will be completed by February 28, 1976 at the latest.*
3. *The views of the Saharan population, expressed through the Djema'a, will be respected.*
4. *The three countries will inform the Secretary General of the United Nations of the terms set down in this instrument as a result of the negotiations entered into in accordance with Article 33 of the Charter of the United Nations.*
5. *The three countries involved declare that they arrived at the foregoing conclusions in the highest spirit of understanding and brotherhood, with due respect for the principles of the Charter of the United Nations, and as the best possible contribution to the maintenance of international peace and security.*
6. *This instrument shall enter into force on the date of publication in the Boletín Oficial del Estado of the 'Sahara Decolonization Act' authorizing the Spanish Government to assume the commitments conditionally set forth in this instrument''³⁰.*

In exchange Spain obtained 35% of the Bou Craa phosphate mines and maintained offshore fishing rights in Morocco's waters. Reportedly, Spain was satisfied by the formalization of some unpublished accords attached to the Madrid Accords³¹.

Consequently, Morocco and Mauritania proceeded to annex to their territories the areas they had been assigned by the Accords, so, in a couple of months, Morocco called for the region of Saguia el-Hamra and part of Río de Oro; on the other side, Mauritania annexed the southern half of

³⁰ United Nations Treaty Series: Declaration of Principles on Western Sahara by Spain, Morocco and Mauritania.

³¹ CANADIAN LAWYERS ASSOCIATION FOR INTERNATIONAL HUMAN RIGHTS, Fact-Finding Mission to Algiers and the Sahrawi Refugee Camps Near Tindouf, Algeria, June 1997.

Rio de Oro (named Tiris al-Gharbiyya), which it would have maintained since 1978 when Mauritania signed a treaty of peace with the Polisario Front.

Obviously the Madrid Accords had been quickly denounced by the Polisario Front, which started very soon its own conflict against Morocco and Mauritania, considered new invaders, while it was backed up by Algeria. Many local soldiers who had previously served for the Spaniards enriched the ranks of Polisario, while many others decided to move away from the cities that Morocco held within its part of Western Sahara and moved in desert outposts.

On 28th November, during this exodus (to make things worse) the Djema'a decided for its own dissolution, even though the third point of the Madrid Accords left it with a significant role since it would have co-administered Western Sahara together with Morocco and Mauritania and it would have been the instrument for Sahrawians to speak out.

This move generated some embarrassment in the three signatories of the Madrid Accords and the UN General Assembly, on 10th December, adopted two resolutions that bore a contradictory nature. The first one, UN Resolution 3458/A³² (1975) regarded Spain as still the administering power and requested it “[...] to take immediately all necessary measures [...] so that all Saharans originating in the Territory may exercise fully and freely, under United Nations supervision, their inalienable right of self-determination”³³. Instead, UN Resolution 3458/B³⁴ (1975) took note of the Madrid Accords and requested the signatories “[...] to ensure respect for the freely expressed aspirations of the Saharan populations” and “[...] to take all necessary steps to ensure that all the Saharan populations originating in the Territory will be able to exercise their inalienable right of self-determination through free consultations organized with the assistance of a representative of the United Nations appointed by the Secretary-General”³⁵.

By the way, the hostilities continued since Polisario guerrilla immediately targeted both Moroccans and Mauritians. The leaders of the Sahrawi resistance established the headquarters of the liberation movement in Algeria, specifically in the town of Tindouf, close to border between all the countries involved in the dispute.

Algeria was, almost since Polisario's foundation, a strong supporter of Sahrawi nationalism and self-determination. Indeed, the Algerian government officially recognized it as a liberation movement in June 1975. The reasons for this assistance are many: first of all an economic reason,

³² This resolution passed with 86 votes for, no votes against and 41 abstentions.

³³ UN General Assembly Resolution 3458/A (1975).

³⁴ This resolution was approved with 56 votes in favour of it, 42 contraries and 34 abstentions.

³⁵ UN General Assembly Resolution 3458/B (1975).

namely the fact that Algeria wanted the possibility to easily reach the Atlantic Ocean in order to trade iron from the Tindouf mines without having to invest a huge amount of money in the construction of an impressive railway³⁶.

Secondly, there was also an historical-political reason: since 1963, because of the so-called “Sand War”, Algeria and Morocco had been arch enemies and their bilateral relations were already put in jeopardy. In this sense, Algerian troops directly supported Polisario members in ground battle; however, the Moroccan troops were able to inflict a terrible defeat to the Algerians in the first battle of Amgala (January 1976)³⁷, so Algeria decided to withdraw its direct support to the Polisario Front and restricted itself to only give logistic support to the liberation movement.

Algeria also managed some refugee camps within its territory and give assistance to those in the Western Sahara desert. During the conflict erupted after the Madrid Accords, several refugee camps in the desert had been subjects of indiscriminate bombings and air raids by the Moroccan army. These actions were aimed at ending quickly the war, but they proved to be inefficient since they mostly hit civilians and not soldiers of the Polisario Front, who used not to live in refugee camps. On the contrary, these air raids forced more and more Sahrawians to seek shelter in Algeria’s refugee camps³⁸, which experienced terrible humanitarian conditions.

Soon, the UN Secretary-General Kurt Waldheim, in accordance with UN Resolution 3458/B sent a special representative to Rabat, Madrid, Western Sahara and Algiers in order to begin negotiations. Therefore, on 7th February 1976, his Special Envoy, the Swedish UN diplomat Olof Rydbeck, started his work. He visited also some refugee camps in the desert³⁹, as well as Western Sahara’s cities such as El Aaiun, and he acknowledged the difficulties in which the Sahrawi people were forced to live. Consequently, when he drafted his first report he was really pessimistic about the possibility to hold a referendum in the short term, since the atrocities of the war between Morocco (and Mauritania) and the Polisario Front were still present.

On 27th February, Spain formally announced the complete decolonization of what was previously known as Spanish Sahara, even though all the Spaniards had flown by the end of 1975. The very same day the Polisario Front officially declared the establishment of the Sahara Arab

³⁶ Around the city of Tindouf there were many iron mines unexploited since the transportation capacities to bring iron from Tindouf to the Mediterranean Sea were not in place. The possibility to use Saharan ports would have permitted a more productive use of those iron mines. More specifically, a railway from Tindouf to the nearest Algerian port would have been 1,100-km-long. On the other side, in order to link Tindouf to the Atlantic Ocean, a 510 km railway should have been built.

³⁷ Algeria’s President Houari Boumedienne denounced Morocco’s actions to the Arab League.

³⁸ It has been estimated that almost 100,000 Sahrawi people crossed the border with Algeria to seek shelter from Morocco’s bombings. They established themselves in refugee camps within the province of Tindouf.

³⁹ However, he did not meet Polisario’s representatives.

Democratic Republic (SADR). The Secretary-General of the liberation movement, El-Ouali Mustapha Sayed, affirmed:

*“The declaration of the Sahara Arab Democratic Republic is the expression of the will of our people. It is also in concert with the UN Charter and the Charter of the Organization of African Unity (OAU). We are ready to fight even for several generations since the King of Morocco intends to escalate the war”*⁴⁰.

In the following days the first government of Western Sahara was put in place and several countries officially recognized the new state and this caused friction between those states and those fighting in Western Sahara⁴¹. Notwithstanding, Morocco and Mauritania continued to penetrate into Western Sahara territory since they basically set their new border.

As time went by, the conflict between the Polisario Front (with Algerian support), Morocco and Mauritania continued despite the attempts by the UN Secretary-General special envoy Olof Rydbeck to initiate negotiations. In those same months, the relations between the UN and both Morocco and Mauritania became really complicated since those countries refused to permit the visit of Rydbeck in their territories.

Even though, since its foundation in 1973, Polisario's military equipment and membership had grown very much, mainly because foreign support from Algeria and Libya, the military strength of Morocco and Mauritania was still prevalent. However, Polisario was able to inflict huge damages to the occupying countries since they were not able to control the vast desert territory of Western Sahara.

The targets of Polisario's guerrilla were essentially the same type of targets that this liberation movement had hit during Spanish occupation. In this sense, various raids were conducted against Moroccan or Mauritanian outposts and even economic capacities or transportation routes had undergone attacks by the Polisario Front. Apart from those types of attacks, the Sahrawi resistance managed to conduct its operations not only within Western Sahara's borders, but it also managed to aggress cities in Morocco and Mauritania; this because the majority of Sahrawi tribes were related to those living in southern Morocco or northern Mauritania, so the Polisario's members

⁴⁰ Proclamation of the first government of the Saharawi Arab Democratic Republic, Bir Lahlou, 27 February 1976.

⁴¹ For instance, Algeria officially recognized the SADR on 6th March 1976 and the very next day king Hassan II decided to break any relation with Algeria.

could easily find shelter among these desert tribes. For instance, on 9th June 1976 the Polisario's troops attacked the capital city of Mauritania, Nouakchott, hitting also the Presidential palace.⁴²

Moreover, between the two occupying countries, Mauritania was the weakest⁴³ since it was subject to economic difficulties and ethnic tensions⁴⁴, consequently, the Polisario Front was more active in the areas occupied by the Mauriticians, than in those taken by the Moroccans. Furthermore, in January 1976 Mauritania's President Oud Daddah appointed, Hamoud Ould Abdel-Wedoud as the new Governor of Western Sahara's territories occupied by the Mauriticians. The new governor opted for an administrative reorganization by changing it into a separate region named Tiris al-Gharbiyya, which capital was Dakhla.

In summer 1976 the SADR acknowledge that, apart from the raids against Morocco and Mauritania, a diplomatic offensive was necessary in order to bring world attention to what was happening in Western Sahara. Therefore, the Minister of Foreign Affairs, Hakim Brahim, began to take part into several forums and world summits, with no regard for political ideologies⁴⁵. For instance, the Sahara Arab Democratic Republic participated as an observer to the Geneva Congress of the Socialist International in 1976. Moreover, the SADR representatives were officially invited to the Port Louis 14th Summit of the Organization of African Unity (OAU)⁴⁶ where its right to self-determination was affirmed by 29 African states, causing the suspension of Moroccan activities in the OAU⁴⁷.

However, the SADR struggled to engage in diplomatic relations with non-African countries. Its relations with France, for instance, soon became terrible because, first of all, French armaments were sold to Mauritanian troops in order to counteract Polisario's operations, secondly because Polisario conducted, in May 1977, a raid against a mine exploited by the SNIM (Société Nationale Industrielle et Minière). During this raid, two French workers were killed while Polisario's troops took as hostages other six French workers. As a consequence, President Giscard d'Estaing decided to launch the so-called "Lamantin Operation" by which France bombed some Polisario's positions for almost one year. However, in 1978 the French public opinion began to demand its government to stop bombing Western Sahara since this practice had been condemned by several humanitarian

⁴² However, during this raid, Polisario's leader and Secretary-General, El-Ouali Mustapha Sayed died after being wounded. He was then replaced by Mohammed Abdelaziz.

⁴³ It constantly resorted to French military aid in order to pursue its military objectives. However, all these efforts did not bring any success in defending from Polisario's attacks.

⁴⁴ There had been contrasts and tensions between the Mauriticians from the south (Africans) and those from the north (Arabs) since the formers did not want to fight for a war that, from their point of view, did not regard them directly.

⁴⁵ In that phase the importance was put on establishing diplomatic relations with as many states as possible.

⁴⁶ The organisation was established on 25th May 1963 and became the African Union (AU) on 9th July 2002.

⁴⁷ Besenyő János, *Western Sahara*, Pécs Publikon, 2009.

organizations and pro-SADR propaganda had demonstrated to be very effective. Therefore, from the summer of 1978 onwards, France did not directly⁴⁸ engage in Western Sahara conflict; so the Polisario guerrilla resumed with even more strength against Mauritians and Moroccans.

An often stricken target were the iron-ore mines present in Tiris al-Gharbiyya, whose production dropped in the late 1970s precisely because of Polisario's raids. Moreover, without French direct involvement, Mauritania was forced to seek Morocco's help in order to secure its territories; so, from 1977 hundreds of Moroccan soldiers were sent to Tiris al-Gharbiyya and even within Mauritania itself. Having already said about the ethnic tensions between African tribes from Southern Mauritania and Arabs in Northern Mauritania, taking into consideration the very bad economic conditions which Mauritania experienced due to several elements: the fall⁴⁹ in iron-ore production (and export), the 1973 economic crisis⁵⁰ and the increasing military expenditures⁵¹; it is not surprising that the African officers of the army plotted against their own government, seizing it and overthrowing peacefully President Mokhtar Ould Daddah on 10th July 1978.

Two days later, being aware of Mauritania's difficulties, Polisario announced an unilateral ceasefire that was soon met by a similar but cautious announcement⁵² by the new Mauritanian President Mustafa Ould Mohamed Salek. The new government stated also that there should have been a referendum in the Mauritanian territory in Western Sahara in conformity with the UN resolutions.

The Polisario Front strongly pushed the new Mauritanian President to engage in peace negotiations, while, at the same time pursuing in its attacks to Morocco's garrisons. However, Mauritania could not commence peace negotiations because its army was unprepared and, more important, thousands of Moroccan troops were stationed both on its part of Western Sahara and on its own territory.

Only after the adoption of a resolution by the OAU affirming the need for a referendum in Western Sahara, Mauritania decided to open peace dialogue with the Polisario Front. This resolution was approved at the 16th Summit of the OAU in Monrovia (Liberia) on 22nd July 1979. It was opposed obviously by Morocco, but was welcomed by 33 countries. in a couple of days the

⁴⁸ It continued to send equipment and weapons to Mauritania.

⁴⁹ It has been estimated that from 1974 to 1978 iron-ore export dropped from 11.7 tons exported to 6.5 tons exported. Consequently, Mauritania's balance of payments deteriorated very much.

⁵⁰ Mauritania does not have oil reserves and is still forced to buy it from other states. The oil crisis of 1973 had terrible effect on oil importer countries.

⁵¹ Only in 1976 military expenditures were raised by almost 50%, reaching 1.8 billion ouguiyas, accounting for 30% of government spending.

⁵² "The goal of the new government is to end the war in accordance with the interest of the people, and in co-operation with the Kingdom of Morocco" he affirmed in a radio message.

peace negotiation generated a peace agreement between Mauritania and Polisario, signed on 5th August 1979 in Algiers. Therefore, Mauritania disclaimed its territorial requests over Western Sahara and officially recognized the Polisario Front⁵³.

As a response to the peace agreement between the Sahrawi resistance and Mauritania, Morocco's king Hassan II opted for the takeover of Mauritanian territory in Western Sahara. Since several Moroccan troops were already stationed in Tiris al-Gharbiyya, this occupation was not really expensive. Indeed, Mauritania, afraid of triggering an open war with Morocco (whose soldiers were also based in Mauritania), did not oppose any effective resistance when on 14th August the takeover was completed despite Mauritania's complaints⁵⁴. Morocco, as a result, held the entire Western Sahara.

Consequently, the UN condemned this event with UN Resolution 34/37 on 21st November 1979, affirming that the UN General Assembly: “[...] *Welcomes the peace agreement concluded between Mauritania and the Popular Front for the Liberation of Saguia el-Hamra and Río de Oro [...]. Deeply deplores the aggravation of the situation resulting from the continued occupation of Western Sahara by Morocco and the extension of that occupation to the territory recently evacuated by Mauritania; Urges Morocco to join the peace process and to terminate the occupation of the Territory of Western Sahara; Recommends to that end the Popular Front for the Liberation of Saguia el-Hamra and Río de Oro should participate fully in any search for a just, lasting, and definitive political solution of the question of Western Sahara [...]*”⁵⁵.

Morocco responded in the first months of 1980 with a diplomatic offensive aimed at isolating Western Sahara in the international community. Moroccan diplomacy managed to promote quite well its interests and many countries, for instance India, withdrew their recognition of Western Sahara or broke off their diplomatic relations with it.

In the following years the Polisario Front continued to attack Moroccan garrisons and economic capacities in Western Sahara as well as Southern Morocco towns, while the Moroccan government reinforced more and more its presence in Saguia El-Hamra and Rio de Oro by encouraging southward migration of Moroccans to Western Sara and by starting the construction of a huge wall⁵⁶ separating the Morocco-controlled areas (called Southern Provinces) from the more desert areas controlled by the Polisario Front. However, way before the barrier was completed

⁵³ Curiously, Mauritania did not formally recognize the Sahara Arab Democratic Republic until 1984.

⁵⁴ Mauritania also sent a note of protest to the UN Security Council denouncing Morocco for having violated Mauritania's sovereignty. The two countries broke their diplomatic relations because of this takeover.

⁵⁵ UN General Assembly Resolution 34/37 (1979).

⁵⁶ The first section of this wall had been erected between 1980 and 1982 and was useful to secure the phosphate mines of Bou Craa, a usual target for Polisario's operations.

(1987), the Sahara Arab Democratic Republic obtained the membership status in the Organization of African Unity on 25th February 1982 and attended the first summit on 12th November 1984 when Moroccan delegation left the Organization in protest⁵⁷, making Morocco the first African country to be member of the UN but not of the OAU (or African Union).

During the 1980s the Western Sahara War experienced an impasse since Morocco was focused on securing its borders by erecting the berm and by promoting resettlement of Moroccans into the Southern Provinces. However, the international community did not remain passive: from 1986 the UN Secretary-General Javier Pérez de Cuéllar, in collaboration with the OAU, began a process of good offices aimed at finding a just and definitive solution to the question of Western Sahara. This process ended up with the drafting of the “Settlement Proposals”, a document to be submitted to both Morocco and Polisario Front in order to solve the conflict.

FROM THE UN SETTLEMENT PLAN ONWARD

The Settlement Proposals had been accepted by both parties in the conflict on 30th August 1988, resulting in a ceasefire (that is still in place today) and the preparation of a referendum to allow the people of Western Sahara to decide whether to become part of Morocco or an independent state. The idea to hold such a vote was then embodied in the UN Security Council Resolution 621 by which the UNSC also authorized “*the Secretary-General to appoint a Special Representative for Western Sahara*”. A year after, on 29 April 1991, the Security Council approved another resolution (690) by which it basically established⁵⁸ the United Nations Mission for the Referendum in Western Sahara (MINURSO).

Therefore, by the end of summer 1991⁵⁹ a ceasefire was in place and the MINURSO was established. This peacekeeping mission had, as its primary function the continue verification of the ceasefire. However, soon tensions broke out with regard to the question about who was entitled to vote in the referendum: on one hand, the SADR and the Polisario Front wanted a referendum based upon the Spanish census of 1974, on the other hand, Morocco wanted that every citizens who was living in Western Sahara should have been granted the right to vote. To this end, king Hassan II strongly encouraged poor Moroccans to resettle in the Southern Provinces.

⁵⁷ Morocco affirmed that the participation of the SADR as a full member violated the fourth article of the OAU Charter, namely that “Each independent sovereign African State shall be entitled to become a Member of the Organization”.

⁵⁸ In accordance with the Secretary-General and his report Secretary-General's report S/22464.

⁵⁹ Specifically on 6th September 1991.

This stalemate on voting rights lasted for very long time and caused serious disputes between the two parties involved and the UN⁶⁰. Consequently the process of voters identification stalled since September 1997 when new negotiations were launched in Houston between the Polisario Front and the Moroccan government, under the supervision of the UN Secretary-General Special Envoy James Baker, a respectable diplomat and former US Secretary of State. This round of talks brought to the adoption of the so-called Houston Agreement.

This document included many important issues, for instance which criteria should be used for voters identification or the confinement of armed forces during the referendum or the adoption of a Code of Conduct regarding the electoral process transparency. Moreover, it set the new date for the long-awaited referendum: 7 December 1998. However, it never took place because, even though the UN personnel completed the process of voters identification⁶¹, Morocco continued to request the inclusion of additional voters. Indeed, Morocco used the appeal procedure⁶² envisaged by the Houston Agreement in order to delay the referendum more and more; in this manner, Morocco wanted to create a sort of *fait accompli*.

In the following years several attempts to find a definitive solution have been made by the UN Secretary-General Special Envoy James Baker, but they all found the opposition of Morocco and Polisario. Eventually, Baker struggled to solve the issue and presented his “Baker Plan” to the parties. In reality, this plan⁶³, also called “Framework Agreement”, was drafted by Moroccan experts through 2001.

The Framework Agreement, proposed to Polisario Front on 5th May 2001, envisaged a Western Sahara integrated within Morocco, but with some degree of autonomy⁶⁴ for at least 5 years, then there would have been a referendum to decide the future status of this territory. Nevertheless,

⁶⁰ In some cases the UN personnel were forbidden to pursue the cataloguing of potential voters both in the Polisario’s controlled areas and in the Southern Provinces of Morocco.

⁶¹ Totally 86,381 people were granted the right to vote for the referendum. They have been selected among tribes with acknowledgeable Sahrawian origins.

⁶² It pushed the Moroccan settlers to make appeals in order to gain voting rights, reaching an amount of almost 130,000 appeals. This resulted in the paralysis of the appealing procedures and have led to the inevitable delay of the referendum.

⁶³ It was also considered an attempt, by the Secretary-General Kofi Annan, to impose the so-called “Third Option” already envisaged by James Baker’s reports and agreed upon by the UN Security Council. This formula have been used to depict the possibility to give autonomy to Western Sahara, but keeping it under Morocco’s sovereignty.

⁶⁴ As it has been discovered by *El Pais* on 14th June 2001, it was impossible that Polisario would have accepted this plan since it gave little autonomy to the Sahrawians. Indeed, Morocco foresaw a Sahrawian legislative assembly that would be elected by both locals and Moroccan settlers (and anyone residing in Western Sahara for more than one year would be eligible to vote for the assembly). Morocco would have retained sovereignty over Western Sahara and it would have full control over Western Sahara’s foreign policy, internal security and monetary/fiscal policy.

Polisario and Algeria refused this plan few weeks later and the UN Security Council abandoned the “Third Option” with its resolution 1359 on 29th June 2001⁶⁵.

By the way, in 2003 The Secretary-General Special Envoy James Baker promoted another plan, called “Baker Plan II”, that has foreseen the creation of a Western Sahara Authority for five years under the kingdom of Morocco. The Western Sahara Authority (WSA) would be elected only by a the voters identified by the MINURSO census. A referendum would then follow and the entire present-day population of Western Sahara would take part, including settlers from Morocco. These people would have to choose between a fully independent state, being integrated into Morocco or being autonomous under Morocco’s rule.

Moroccans strongly opposed this proposal, while Polisario and Algeria cautiously (and surprisingly) accepted it and, in July 2003, the UN Security Council endorsed the plan. After Morocco’s rejection of the “Baker Plan II”, the Special Envoy James Baker resigned.

In the following years several attempts have been made in order to open negotiations between Morocco and the Polisario Front, however still no notable results have been achieved. The mandate of the United Nations Mission for the Referendum in Western Sahara (MINURSO) has always been extended since 1991. The referendum over the destiny of Western Sahara has been delayed many times and has not been set yet, meanwhile thousands of Sahrawi people still lives in the refugee camps in the Free Zones or in the area close to Tindouf. Up until now a solution to solve this dispute is still needed.

⁶⁵ Specifically, the UN Security Council: “[...] encourages the parties to discuss the draft Framework Agreement and to negotiate any specific changes they would like to see in this proposal, as well as to discuss any other proposal for a political solution, which may be put forward by the parties, to arrive at a mutually acceptable agreement [...]”.

CHAPTER 2: MEDIATION

THEORETICAL BACKGROUND

When dealing with international conflicts there often can be a negotiation process that, in the majority of the cases, foresees an intervention by a third party. This intervention is always done through mediation.

Talking about mediation, it is really important to define precisely what mediation is. Using Jacob Borcovitch's words⁶⁶, it can be defined as a voluntary form of conflict management that is characterized by a non-coercive, nonviolent, and, ultimately, nonbinding form of intervention. Using, instead, the words of Ho Won Jeong who provides a classic definition of what mediation is: *"[mediation] is regarded as a process whereby a neutral third party, acceptable to all disputants, facilitates communication that enables parties to reach a negotiated settlement"*⁶⁷.

Mediations is always carried on by a third party, called mediator, that enter a dispute in order to, change it, modify it, resolve it, affect it or influence it in some way. The mediator must be impartial and has an active role in the dispute since it has the responsibility to find solutions (if possible) and propose them to the parties involved. In this sense the mediator, although it plays a role, can be conceived as being a "full partner" in the mediation, generating a triadic structure rather than a dyadic one typical of the common negotiation.

However, the mediator's supposed impartiality can be modified in certain specific moments, for instance when it is a matter of necessity after military setbacks. Nonetheless, this impartiality regards only the whole mediation process, but it can be modified (only if the mediation can surely bring about the ending of the dispute in a way that both parties can accept) when dealing with specific issues.

Even though the mediator possesses an active role in the dispute resolution, the parties maintain control over the entire process and keep their faith in their own hands. Indeed, the outcome of the mediation process should be accepted or refused by both the parties at any time, therefore the results of every mediation are nonbinding⁶⁸ and the outcome is a win-win situation.

⁶⁶ William Zartman, *Peacemaking in International Conflict: Methods & Techniques*, United States Institute of Peace; Revised edition (2007)

⁶⁷ Ho Won Jeong, *Conflict Management and Resolution: An Introduction*, Routledge, 2009, pag. 172.

⁶⁸ It is correct to say that the parties involved maintain a sort of ownership over the outcome.

Since the final outcome should be agreed on by the disputants, the mediator has more leverage if he promises (or directly gives) to them some sort of political or economic support and if they have great expectations on such outcome. This was exactly the case of the U.S. support to both Israel and Egypt after their acceptance of the negotiated agreement in 1979⁶⁹.

It is also important to stress the fact that the structure of the interaction between the parties evolves a lot during the mediation. This transformation, however, does not come alone, but it happens along with: an evolution of communication patterns, an exploration of new approaches to the dispute, and different methods for evaluating the feasible options.

Moreover, it is fundamental not to confuse mediation with other types of dispute resolution procedures such as, for instance, the practice of “good offices” or that of “shuttle diplomacy”. In providing “good offices” a third party is more passive and only limits itself to bring to the table of negotiation the parties involved in the dispute; in this sense, its role is that of a facilitator which operates mostly in the pre-negotiation phase⁷⁰. On the other hand, using Ho Won Jeong’s words, “shuttle diplomacy” means the provision of “*communication means for the exchange of proposals by involving a neutral go-between role*”⁷¹.

Mediation must also not be confused with arbitration, another type of dispute resolution. In the arbitration the decisions or recommendations taken by the arbitrator are absolutely binding. The arbitration, as the mediation, has a triadic structure (different from the dyadic one typical of the negotiation) in which the third party is independent and impartial and it controls the entire process exclusively. Another difference between mediation and arbitration stands in the fact that the former is a non-institutionalized process with no general procedure or formal rules, while the latter follows a well-defined scheme with precise formal rules and standardized procedures. This notable difference gives much more freedom and space for maneuver to the mediator with respect to the arbitrator.

⁶⁹ Ho Won Jeong, *Conflict Management and Resolution: An Introduction*, Routledge, 2009, pag. 176.

⁷⁰ Geoff R. Berridge, *Diplomacy: Theory and Practice*, Palgrave Macmillan (2015): “*A third party acting as a facilitator or provider of good offices has a more limited role than a mediator, usually involving no more than helping to bring the parties in conflict into direct negotiations. At this point it withdraws, although it will usually remain in the wings in case the talks threaten to founder and it is needed again. In short, its role is limited to the pre-negotiation stage. Modern social-psychological versions of this traditional approach emphasize that an enduring settlement is one at which the parties must arrive themselves, and reflect basic attitude changes. It is quite common for a good offices mission to turn into a mediation, but the activities remain distinct.*”

⁷¹ Ho Won Jeong, *Conflict Management and Resolution: An Introduction*, Routledge, 2009, pag. 178.

Furthermore, before the arbitrator pronounces its recommendations, the parties could only submit their evidences or ideas or materials and then the arbitrator decides⁷². Instead, during a mediation the parties could intervene in the process by advancing new proposals or envisaging different alternatives. Therefore, during mediation the parties play an active role during the whole process, while during arbitration they soon became prone and passive with regards to the arbitrator, who only receives their initial inputs.

Regarding the role of mediator, according to Ho Won Jeong, he should possess two important qualities: credibility and empathy. The former characteristic helps to gain the parties respect and their confidence, while the latter means to be able to create a positive mood with each of the disputants in order to understand properly their ideas, needs and feelings⁷³.

In addition, in his book called *Diplomacy: Theory and Practice*, Geoff R. Berridge basically distinguishes between different mediators with different degrees of leverage in the nowadays world. He also collects them into broad and various categories or, as he labels them, “tracks”.

Consequently, there can be “Track One Mediation” when the mediator role is enacted by states. These entities becomes mediators for several different reasons: the desire to solve crisis and to pursue global stability⁷⁴, the will to enhance their international prestige⁷⁵, the duty to mediate in a conflict because an international organization (for instance the United Nations) has requested to do so, the need to deescalate tensions within alliances⁷⁶. There can be also the case of state actors that have built a status of reliable negotiators, peacemakers and impartial mediators; for instance this can be the case of Norway⁷⁷ or Qatar. eventually, it can be said that “Track One Mediation” often brings benefits to states that actively play the role of the mediator in dispute resolution.

On the other hand, as Berridge affirms, there can be also a “Track Two Mediation”⁷⁸. In this case the mediator is not a state, but commonly an NGO or a private individual. For this reason the “Track Two Mediation” is often labeled also “citizen diplomacy” and it has developed a lot in recent years. This category of mediators is especially relevant in cases when it is necessary to deal with sub-state actors or even terrorist organizations.

⁷² As Berridge points out: “*Arbitration is the same as conciliation, except that the recommendation is binding. It is akin to, but not the same as, judicial settlement.*”

⁷³ Ho Won Jeong, *Conflict Management and Resolution: An Introduction*, Routledge, 2009, pag. 173.

⁷⁴ Global stability is an international common good. Several examples can be made, when the United States mediated between Israel and Egypt in Camp David in 1978 after decades of conflicts between Arabs and Israel.

⁷⁵ This was the case of the Soviet mediation between India and Pakistan in 1966, since both were not into the Western sphere of influence, or the case of the American mediation between Angola and Mozambique in 1988.

⁷⁶ A famous case in this sense can be the mediation role played by the United States during the Cyprus crisis of 1974 when two of the US allies within the NATO, Greece and Turkey, started a conflict between each other.

⁷⁷ It was fundamental in the peace process that led to the Oslo Accords in 1993 between Israel and PLO.

⁷⁸ Actually, this concept has been firstly elaborated by the American diplomat Joseph Montville.

Despite civil society organizations and NGOs have no major capabilities (no army, limited resources, not even incentives or inducements), they sometimes succeed where states or international organizations fail. However, as studied by Dalia Dassa Kaye⁷⁹, obviously also the “Track Two Mediation” fails sometimes and this is particularly due to the fact that it speaks to the wrong type of person⁸⁰ who has not so much leverage power with regards to his government or his people, even though he might be willing to solve the dispute at stake.

Examples of NGOs involved in diplomacy and mediation are: Emergency and Oxfam. Curiously, in recent years it has been registered an increase in the number of religious NGOs (those called FBOs, faith-based organization, by Marie Juul Petersen)⁸¹ active in mediation, for instance: World Vision, the Community of Sant’Egidio or Islamic Relief. Anyway, the FBOs maintain a strong persuasive ability from a moral point of view. Among others, the Community of Sant’Egidio played a key role in solving the Mozambican civil war since it was liked by both sides of the war (government and the rebels of RENAMO). In that occasion, the Community of Sant’Egidio brokered the final agreement between the parties with the help of the United Nations and the Italian government⁸².

Even though it is not an NGO, it is worth recalling the mediation efforts performed by the Catholic Church in several contexts such as the dispute between Chile and Argentina when Pope John Paul II mediated⁸³ in order to avoid a direct confrontation after the Argentinian military junta apparently decided to obtain sovereignty over three small islands in the Beagle channel.

Furthermore, “Track Two Mediation”, as already said, can be also provided by individual actors who rely on their own ability to communicate and facilitate in order to develop flexible arrangements. Usually, these individuals operate in the pre-negotiation phase, when formal direct negotiations are not in place already. Anyway, their involvement is uncommon compared to states’ involvement in mediating crisis. An example of this kind of mediation carried on by individuals is that of the former U.S. President Jimmy Carter. Indeed, he had a significant role in mediating in several different contexts: for instance when he visited Pyongyang in 1994 and helped transmitting North Korea’s proposal to Washington D.C. during a time of harsh confrontation between the U.S.

⁷⁹ Dalia Dassa Kaye, *Talking to the enemy: track two diplomacy in the Middle East and South Asia*, RAND Corporation, 2007.

⁸⁰ For instance, David Grossmann and several Israeli writers in the dispute between Palestine and Israel.

⁸¹ Marie Juul Petersen, *International Religious NGOs at The United Nations: A Study of a Group of Religious Organizations*, The Journal of Humanitarian Assistance, November 2010.

⁸² The Rome General Peace Accords were signed on 4 October 1992 under the aegis of Andrea Riccardi (founder of the Community of Sant’Egidio), Matteo Zuppi (Archbishop of Bologna), Jaime Gonçalves (Archbishop of Beira) and Mario Raffaelli (an Italian member of the Parliament).

⁸³ Ho Won Jeong, *Conflict Management and Resolution: An Introduction*, Routledge, 2009, pag. 187.

government and Pyongyang or when he led the delegation to negotiate peace with the Haiti government avoiding an U.S. invasion in the island⁸⁴.

To sum up, the fundamentals of mediation could be divided in: the parties to a conflict, the mediator, the process of mediation and the context of mediation. This last fundamental of mediation is always analyzed prior to the mediation itself since it is necessary to proceed cautiously by firstly examining the nature of the dispute (if it is just a dispute or if it is a concrete war). Secondly, there should be an analysis on the issues at stake (for instance if it deals with a territorial dispute or trade dispute, etc.). Then it is important to examine the very nature of the parties involved (if they are state, sub-state entities, terrorist organizations, etc.) and finally, the last step, is to analyze the relationship between the parties involved (for example, if they have been considering each other as enemies for decades or if they are parties to the same alliance).

After having completed each of these steps, the process of mediation begins with the identification of the mediator and the choice of the best mediation strategy to follow. Then, after the mediation process ends, it is important to assess the outcome of the mediation both from a subjective and an objective point of view. In this last case, when the outcome is positive from an objective point of view it is always endorsed by the UN Security Council⁸⁵.

Regarding the process of mediation, there are several types of mediation that differ from each other in many ways. The main two of these types are: Neutral Mediation and Principle Mediation. In the former case, the mediator stays outside of the process as much as possible, therefore his role is similar to that of a simple facilitator. In the latter case, the mediator takes a much more intrusive role in the mediation. He communicates with each of the parties and each of the parties communicates with him while negotiating among them. He envisages and proposes solutions and options to the parties involved. The choice between the two mediation styles depends mostly upon the capabilities (military, economical, diplomatic, etc.) of the mediator⁸⁶.

Moreover, there are other differences between Neutral and Principle mediation: Neutral Mediation concentrates much more on the interaction among the parties: it makes sure that the parties connect and talk to each other. Principle mediation is much more concentrated in the outcome of negotiation: the mediator wants to achieve a result more than concentrating on the relationship between the parties. Furthermore, Neutral mediation tries to create some empathy and

⁸⁴ Ho Won Jeong, *Conflict Management and Resolution: An Introduction*, Routledge, 2009, pag. 187.

⁸⁵ For instance this is the case of the Joint and Comprehensive Plan of Action between the 5+1 and Iran (endorsed by the UNSC).

⁸⁶ For instance, if the US mediates, it is usually a principle mediation; if Switzerland mediates, usually it is a neutral mediator

mutual understanding among the parties by inviting the parties to put themselves in their counterpart's shoes. On the other side, the Principle mediator is able to create incentives, mainly because it has his own capabilities⁸⁷.

MEDIATION STYLES

The mediator can adopt different strategies or styles in performing his tasks during the mediation process. By the way, three basic styles of mediation can be easily identified⁸⁸: facilitative mediation, formulative (or evaluative) mediation and manipulative⁸⁹ mediation. The first one is more related to the negotiation process management, while the other two are more outcome-oriented. The choice between these options is done only after the analysis mentioned above, namely after having examined: the nature of the dispute, the issues at stake, the nature of the parties and the relationship among them. Therefore, before identifying the correct style to adopt, it is necessary to analyze the context in which the mediation process occurs.

In the facilitative mediation, the mediator fulfills the role of convincing the parties to communicate to each other. However, he adopts an integrative strategy⁹⁰ of preparing the ground of negotiation and sometimes he even tries to define what should be the composition of the delegation, the venue⁹¹, the documents to put on the table, the agenda⁹² to be discussed, when to start negotiations, etc⁹³.

Furthermore, he can also help the parties "save face" since he can serve as a buffer while maintaining the communication links opened. For instance if one party believes that keeping a

⁸⁷ Javier Solana, High Representative of the EU for Foreign Affairs, during the negotiations for the Iranian nuclear program between 2003 and 2008, put on the table a comprehensive trade agreement between Iran and the EU promising to open European markets towards Iran only if the nuclear issue would have been solved. He did so knowing that the EU as a whole is a global power in terms of trade, and opening its markets towards Iran would have been very convenient for the Iranian economy.

⁸⁸ William Zartman and Saadia Touval, *International Mediation: Conflict Resolution and Power Politics*, The Society for the Psychological Study of Social Issues, 1985.

⁸⁹ Also named mediation with "a clout".

⁹⁰ This is the main difference with providing "good offices" which merely aims at convincing the parties to start negotiating.

⁹¹ A classic example of this is the Iranian hostage crisis in 1979/1980. In that occasion, Algeria had the role of a facilitator since the US and Iran were not talking to each other at that time. So Algeria was at the centre of these disputes: the Americans travelled from Washington to Algiers, the Algerians from Algiers to Washington and to Teheran, the Iranian from Teheran to Algiers. In this sense, Algiers was the point of articulation of the different positions, but the substance of the issue was solved by Teheran and Washington. The Algerians played the role of creating the conditions for a better communication and the final outcome was that the Iranians decided to make a public statement in which Ayatollah Khomeini was delivering the hostages to the Algerians, not to the Americans, and then the Algerians delivered the hostages to the US.

⁹² By structuring the agenda, he can shape the whole negotiation context.

⁹³ When face-to-face communication is difficult, the mediator can also act as a conduit of notes between the parties.

direct talk with the other one would create a domestic problem, it can use the mediation as a scapegoat, blaming the other party while maintaining indirect talks with it through the work of the mediator. In this sense, the party who fears to face an internal crisis can opt for an unpopular move suggested by the mediator, using him as a scapegoat⁹⁴.

Consequently, the mediator observes the behavior of the parties and from time to time intervenes to solve situations of stalemate, being the guardian of the entire process but without making substantive contribution. Therefore, facilitation means creating a climate of confidence where the parties are free to express their positions and also free to quarrel but in a very positive and constructive context. In this sense, the facilitator is oriented toward the management of the negotiation process rather than toward the final outcome.

From this perspective, the facilitative mediation style is similar to the one outlined by two other scholars: Robert Bush and Joseph Folger. In their book "*The Promise of Mediation: The Transformative Approach to Conflict*", they described the transformative style as a technique aimed merely at transforming the relationship between the disputants, not at reaching some sort of agreement. This not only makes the transformative mediation oriented toward the negotiation process management, but it also represents the main difference between this mediation style and the others. However, it is rarely used for situations of crisis⁹⁵.

In the Western Sahara scenario, a facilitative mediation style was adopted by the UN firstly in September 1977 when the Polisario Front triggered a crisis by kidnapping some French hostages in Mauritania during a raid in the city of Zouerate. Diplomatic relations between Algeria (who supported Polisario) and France deteriorated a lot. The UN Secretary-General Kurt Waldheim stepped in in order to calm down the two disputants. He did not propose any solution, he basically talked to respectively Algeria, Polisario and France and helped developing communication between them. He succeeded in his efforts and eventually the French hostages were liberated.

The second style of mediation, the formulative one, is much more intrusive and involves not only the creation of the conditions for developing a dialogue, but also the direct participation of the mediator in finding a formula to reach an agreement between the parties. In this sense, the mediator does not wait for the parties to make proposals and to understand which is the common ground; he himself is involved in finding the solution and helps parties to save their face, meaning that no party should leave the negotiation with the perception of having been somehow defeated.

⁹⁴ Ho Won Jeong, *Conflict Management and Resolution: An Introduction*, Routledge, 2009, pag. 175.

⁹⁵ Ho Won Jeong, *Conflict Management and Resolution: An Introduction*, Routledge, 2009, pag. 183.

Typically, the formulator writes the draft of the agreement and circulates it among the members of the different delegations. Indeed, firstly the mediator listens to parties' interests and needs and then he formulates serial drafts requesting the parties to criticize it until they agree on as many elements as possible. Eventually, the mediator can draft a final document in which he manages to combine all the points agreed upon during the mediation process⁹⁶. Only at this point the litigants have the choice to approve or not to approve the final draft.

This modus operandi is also called the "one-text procedure" because the facilitator and the parties involved literally work on one text⁹⁷. Indeed, the parties are not allowed to keep, to revise, or to make additions to the mediator's draft; only the mediator can make such actions. This procedure has many advantages, for instance: it initially serves to narrow the different opinions of the parties, it helps keeping good working relations between the parties since they may only criticize the facilitator's draft, but most importantly it makes each of the parties to understand the interests of the other.

The most notable and, at the same time, most common problem of the formulative style of mediation is that its effectiveness decreases for three main reasons: when the parties do not have an high desire to find a settlement for their dispute, when there is a lack of information or when one of the party tries to obtain a last-minute concession⁹⁸. In the Western Sahara scenario, as it will be explained later, the formulative approach adopted by James Baker failed exactly because both Morocco and the Polisario Front showed not to have (at least with concrete acts) an high desire to find a settlement for their dispute.

The third style of mediation is the manipulative mediation. Manipulation means that the mediator is so involved in the negotiation that he is drafting himself the final solution of the crisis. It is important to stress the fact that in this case the mediator cannot be someone without capabilities, therefore he shall represent a superpower or a strong international organization like NATO or the UN.

Consequently, what the mediator does is connected to his own capabilities. Through these, the mediator is able to reward the parties, to change their expectations, to modify their BATNA⁹⁹ and therefore to expand the possible zone of agreement. In order to perform such acts, the mediator

⁹⁶ In cases in which there are plenty of issues at stake, this drafting can produce even more confusion. This is one of the main risks to be avoided by the mediator.

⁹⁷ Irma Tyler-Wood, C. Mark Smith, and Charles Barker, *The Negotiator Magazine*, Journal of the North American Association of Educational Negotiators, 2003.

⁹⁸ Ho Won Jeong, *Conflict Management and Resolution: An Introduction*, Routledge, 2009, pag. 178.

⁹⁹ Best Alternative to a Negotiated Agreement.

usually employs the leverage of sanctions¹⁰⁰ or incentives aimed at modifying (increasing or lowering) the parties' BATNA. This is the main difference between this style of mediation and the formulative one: the formulator cannot put pressure on the disputants he only tries to find a solution and to convince the parties about the costs of non-negotiation, but he cannot put pressure on them¹⁰¹.

Among the sanctions that the mediator can employ there are financial sanctions¹⁰², diplomatic sanctions¹⁰³, economic sanctions¹⁰⁴, but also the threat of military intervention. As stressed before, these sanctions increases the parties' BATNA and therefore they raise the costs of not reaching an agreement.

The mediator can also employ incentives to solve the dispute, such as the promise to open trade agreements, the promise of lifting sanctions (in the case of Iran), the provision of national security assurances (in the case of North Korea), the opening of diplomatic relations, the inclusion in security alliances, the establishment of a military cooperation, the provision of financial assistance.

An example of manipulative mediation can be found in the mediative role played by the United Kingdom and the United States in dealing with the Cyprus crisis of 1974. The U.S., indeed, threatened both Turkey and Greece to withdraw American nuclear weapons from their territories, leaving the disputants with no American protection. Simultaneously, the United Kingdom mobilized its army, preparing to invade the island. Eventually, these strategies had been useful in order to deescalate the tensions, even though the disputants did not found a definitive solution for the Cyprus issue in that occasion.

By the way, these three styles of mediation are not unique and impenetrable, they merge with each other as the process of mediation is underway. At the beginning, often it is necessary to adopt a facilitative style in order to convince the parties to begin talks, but then, sometimes, the mediator realizes that he should be a little more intrusive and, as a consequence, he uses a more formulative strategy. Finally, at a certain point, there can be the necessity to "manipulate" the

¹⁰⁰ There is an open debate about whether sanctions are part of diplomacy or not. Importantly, they do not imply the use of force, but they are a tool to achieve compliance, but many think that they are not part of diplomacy since they put pressure on one of the parties involved in the negotiation which should achieve a win-win solution. Indeed, many scholars view sanctions as the first step of a low-intensity conflict that cannot be part of negotiation, but it is parallel to it.

¹⁰¹ Jonathan Wilkenfeld and Kathleen Young, *Mediating International Crises*, Routledge, 2005.

¹⁰² For instance, those used against Iran in the nuclear agreement negotiation such as the freezing of the Iranian government's assets abroad.

¹⁰³ For instance, the participation denial in international forums or the expulsion of diplomatic personnel from the mediator country.

¹⁰⁴ For instance, the introduction of embargoes on commodities but also on military assistance.

process by putting pressure on the parties involved or by increasing the costs of interrupting the negotiation process.

Even their outcomes are very different: a facilitative mediation style would be more suitable for achieving a negotiated agreement that lasts even in the long-term and that bears a mutually reinforcing nature¹⁰⁵, while the formulative and the manipulative styles are more effective in the short-term, with the side effect of not always tackling the very roots of the dispute.

At the end of a mediation there should be room for assessing it. This final evaluation, in its simplest form, can be based on two features: the containment of the crisis/conflict and the prevention of further clashes between the parties. However, other criteria for assessing a mediation can be added, for example if it helped to reach an agreement or if it served to improve the parties' relations, etc. However, as also Ho Won Jeong pointed out, the *"The success or failure of mediation represents not only internal but also external variables, ranging from the intervention timing to a shift in an international political environment"*¹⁰⁶.

In addition, apart from the real capacity of a mediator, other external variables that can affect the effectiveness of a mediation are: the parties desire and motivation to put an end to the conflict, their internal affairs, their internal decision-making process and their distribution of power. As it will be seen, in the Western Sahara crisis, these external variables have played (and still play) a key role in influencing the effectiveness of the UN mediators' efforts, for instance during the James Baker era.

In the UN framework, the mediating role of the Secretary-General is increased¹⁰⁷ a lot since the very foundation of the United Nations after World War II. These mediating powers have been granted to the Secretary-General by the UN Charter itself in Chapter XV. Article 98, for instance, allows him to *"act in that capacity in all meetings of the General Assembly, of the Security Council, of the Economic and Social Council, and of the Trusteeship Council, and shall perform such other functions as are entrusted to him by these organs. The Secretary-General shall make an annual report to the General Assembly on the work of the Organization"*. The so-called "other functions"

¹⁰⁵ Since the parties have been able to reach an agreement with their own force without being convinced to by a mediator.

¹⁰⁶ Ho Won Jeong, *Conflict Management and Resolution: An Introduction*, Routledge, 2009, pag. 190.

¹⁰⁷ Jacob Bercovitch, *Resolving International Conflicts: The theory and practice of mediation*, Boulder, CO: Lynne Rienner, 1996.

include also crisis prevention and dispute settlement: good offices, facilitation, mediation and even arbitration¹⁰⁸.

Moreover, the Secretary-General may act by himself or may appoint a special envoy and representative to perform good offices, mediation, facilitation, etc. on his behalf. Several representatives of the UN Secretary-General also engage in peace talks or crisis management while supervising a UN peacekeeping mission in the field. For instance, the head of MINURSO is the Special Representative of the Secretary-General for Western Sahara (SRSG), even though there are also Personal Envoys for Western Sahara¹⁰⁹.

Furthermore, the Secretary-General, as stated by Article 99: “*may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security*”. Thus, he carries out also a role of indication of possible threats to peace and security.

However, since the United Nations has limited physical resources, the mediation strategy acted by the Secretary-General (or by his representatives and envoys) could not be a manipulative one: he cannot impose sanctions or deploy incentives. Indeed, he often uses a facilitative¹¹⁰ or rather a formulative mediation style. However, the Secretary-General bears a huge authoritative power in his hands: he is the most prominent figure of the most important and universally accepted international organization, he is impartial and morally superior, he represents the United Nations and he promotes (together with the other structures within the UN) the ideals and values embodied in the Charter.

It is also worth mentioning the peacekeeping role of the Secretary-General. Peacekeeping operations are not forms of mediation, but sometimes they have been organized in order to gain time for a negotiated dispute settlement. Therefore, they can be complementary to mediation in this sense. The Secretary-General, after being delegated by the UN Security Council, negotiates with the parties involved in order to gain their acceptance to allow the peacekeeping mission, appoints its chief, organizes the forces and drafts the reports.

After having described the historical events that affected Western Sahara from the Sixties, after having made a necessary theoretical introduction on what the mediation is and how it works,

¹⁰⁸ Even though usually the Secretary-General is not implicated in this type of dispute settlement, in some cases the parties have agreed to treat his opinions like a sort of binding judgements. For instance, following the dispute about the sinking of the Greenpeace’s boat “Rainbow Warrior” in 1985, France and New Zealand agreed that the solution suggested by the UN Secretary-General would have been binding.

¹⁰⁹ Indeed, they are not heads of MINURSO.

¹¹⁰ Ho Won Jeong, *Conflict Management and Resolution: An Introduction*, Routledge, 2009, pag. 178.

the next section will focus on the analysis of the different mediation styles of the UN Secretary-General Personal Envoys for Western Sahara in a period of time that goes from 1997 to 2018. These Personal Envoys have been: James Baker (1997-2004), Peter van Walsum (2005-2008), Christopher Ross (2009-2017) and Horst Köhler (2018 onwards).

CHAPTER 3: JAMES BAKER (1997-2004)

JAMES BAKER'S APPOINTMENT AND THE SPIRIT OF HOUSTON

In January 1997, when Kofi Annan assumed his post as the new UN Secretary-General, he examined every UN operation. Soon in his first report he dealt with the case of Western Sahara, which necessitated a deep scrutiny since the UN, for six years, had devoted lots of efforts and resources in order to find a definitive solution, apart from the cease-fire of 1991.

He immediately asked for an evaluative paper in order to choose the best policy option for Western Sahara's future. The paper, envisaged several alternatives, namely: to maintain the Settlement Plan and to pursue its implementation; to abandon the Settlement Plan and to search for a sort of "third option"; to maintain the Settlement Plan while seeking a "third option"; to disengage from Western Sahara waiting for better political conditions.

Soon afterward, the new Secretary-General concentrated on the second option. The situation in Western Sahara was characterized by a total stalemate: in summer 1996 a new round of talks between the Polisario Front and Morocco ended up being totally useless and, at the same time, the process of voters identification was still blocked. Moreover, on 29 May 1996 the UN Security Council decided, on one hand to extend MINURSO's mandate, but on the other hand a reduction in its military component¹¹¹.

These events have generated, in the eyes of Kofi Annan and the Security Council, the need to engage in a more intrusive mediation strategy carried on by a mediator that would no longer be a mere facilitator, but a formulator. This new mediator would guide the disputants toward a solution that he himself would envisaged.

In that period the United States were closely allied with both Morocco and Algeria (who backed up the Polisario Front) and was thus trusted and respected by both. Morocco had a special relationship with the United States since 1786 when Morocco became the first African state to recognize the newly born United States of America. Moreover, Morocco always lobbied for

¹¹¹ UN Security Council Resolution 1056 (1996): "*The Security Council, [...] agrees with the recommendation of the Secretary-General that the identification process be suspended until such time as both parties provide concrete and convincing evidence that they are committed to resuming and completing it without further obstacles, in accordance with the settlement plan; supports the proposal of the Secretary-General to reduce the strength of the military component of MINURSO by 20 per cent, on the understanding that this will not impair its operational effectiveness in monitoring the cease-fire; [...] decides to extend the mandate of MINURSO, on the basis proposed by the Secretary-General in his report of 8 May 1996, until 30 November 1996 [...]*".

American influence in the Arab world¹¹². Algeria, on the other side, from the 1980s and throughout the 1990s tried to improve its relations with the United States, for instance: it mediated with Iran during the hostage crisis of 1979-1981, its President Chadli Bendjedid officially visited Washington D.C. in 1985 and like Morocco, when the “war on terror” broke out, Algeria gave direct support to American operations in the Middle East.

Therefore, an American mediator would have been perfect for assuming the role of a formulator in the dispute between the parties. Kofi Annan proposed to the UN Security Council a really notable figure: the former U.S. Secretary of State under George H. W. Bush administration, James Addison Baker. He was consequently appointed UN Secretary-General Personal Envoy to Western Sahara on 18th May 1997.

His appointment triggered enthusiastic reactions among Algerian government and the Polisario Front, who welcomed Baker’s designation since they took into consideration his work in Kuwait. Instead, Morocco on one side appreciated the involvement of an American mediator in the dispute because of the positive relations between Morocco and the U.S., but on the other side it acknowledged the risks of dealing with such a tenacious mediator.

As said before, the Secretary-General decided to move away from the Settlement Plan and to seek a “third option” to deal with the Western Sahara case. However, since the Settlement Plan was still in place, Kofi Annan could not immediately abandon it because this would have meant a sort of “admission of incapacity” to solve this issue. Therefore, Baker was asked firstly to consider if the Settlement Plan could be implemented¹¹³ or not. If the answer was negative, Baker was authorized to explore other possibilities to help the disputants resolve their conflict. Thus he was encouraged to propose solutions and other options as a real formulative mediator should do.

In order to consult with the disputants¹¹⁴, the new Personal Envoy commenced his mandate with a visiting mission to Western Sahara region from 23 to 28 April 1997. In that occasion he realized that both parties, despite being still unyielding on their positions, were determined on maintaining the Settlement Plan and even on implementing it. When he came back from his mission, after having directly informed Kofi Annan, Baker stressed the need of direct talks between Morocco and Polisario.

In June 1997 the UN Secretary-General asked the two disputants, as well as the neighboring countries, to send their representatives to a first separate meeting with his Personal Envoy James

¹¹² This was particularly useful for the United States when the “war on terror” broke out in 2003.

¹¹³ Whether keeping its original form or with secondary adjustments.

¹¹⁴ Plus Algeria and Mauritania as neighbouring countries.

Baker and his team¹¹⁵, in order to set the rules for subsequent direct talks. This meeting was held on 10 and 11 June 1997 in London.

On that occasion the discussion regarded the rules of the future talks that would have been held in Lisbon on June 23. Everybody agreed that there would have been a private consultation, not an international conference, and it would continue since Mr. Baker believed it was necessary. Algeria and Mauritania would have been observers, but would participate in the talks only if the discussion would have regarded issues directly affecting them.

In that occasion the new mediator James Baker, maybe because he was dealing with Western Sahara only for few months or maybe because those were separate indirect talks with representatives of the parties, began his work being still more a facilitative rather than a formulative mediator. However, a formulative strategy can already be seen as it was specified in an excerpt of the UN Secretary-General Report S/1997/742:

*“My Personal Envoy further explained to the parties that, during the direct talks, he would make suggestions and offer ideas to facilitate their work, including proposals for bridging their differences to try to eliminate deadlocks. However, he would have no power to impose solutions on them, or veto agreements reached by them. It was agreed with the two parties and the two observer countries that complete confidentiality would be maintained and that no issue would be considered as finally agreed until all outstanding issues were agreed”*¹¹⁶.

The Lisbon meeting of 23rd of June 1997 was the first official direct meeting between all the parties involved in the London talks. However, the discussion got stuck on the issue of Saharan voters identification. Soon afterward, talks were resumed on 19-20 July again in London.

During this second round the parties managed to reach an agreement on the issue of identification. The parties agreed that they would not *“directly or indirectly sponsor or present for identification anyone from the [contested] tribal groupings H41, H61 and J51/52 other than persons included in the Spanish census of 1974 and their immediate family members”*; however, they agreed also on the fact that they would not have been compelled to *“actively prevent”* anyone

¹¹⁵ The team was composed also by Chester A. Crocker, former U.S. Assistant Secretary of State for African affairs, John R. Bolton, former U.S. Assistant Secretary of State for International Organizations and Erik Jensen, UN Secretary-General Special Representative for Western Sahara at that time.

¹¹⁶ UN doc. S/1997/742, Report of the Secretary-General on the situation concerning Western Sahara.

from those tribes from applying for identification¹¹⁷. Other agreements were found on minor issues¹¹⁸.

Moreover, the parties (plus Algeria and Mauritania) also decided to hold a third round of direct talks on 29-30 August in Lisbon in order to discuss other controversies, mainly related to troop confinement and to the freeing of both sides' prisoners of war and of Saharawi political detainees.

Regarding troop confinement, James Baker proposed a solution to both parties: the reduction and confinement of Moroccan army in accordance with the Settlement Plan's provisions and the confinement of a limited amount¹¹⁹ of Polisario armed forces on Western Sahara's territory. That was a proposal of the Personal Envoy James Baker, acting as a formulator by proposing a solution to the parties who were obviously free to accept it or not. Furthermore, the parties agreed for the total repatriation of their respective prisoners of war and for the granting of an amnesty for Saharan political detainees. These two would have commenced, according to the Settlement Plan, before the referendum campaign's opening.

Nonetheless, a final issue to be tackled was the adoption of a code of conduct for the referendum campaign. At the Lisbon meeting there was no sufficient time to deal with such a controversial issue. Indeed, Morocco was not really keen on discussing about how to behave during the referendum campaign. Consequently, the talks on that issue were postponed to a new round of negotiation to be held in Houston from 14 to 16 September 1997.

In those September days, at the Baker Institute for Public Policy in Houston, the fourth round of direct talks developed under the auspices of the UN, Mauritania and Algeria. At the end of the negotiation, Morocco and the Polisario Front reached agreement on the adoption of a Code of Conduct to respect during the referendum campaign. The parties also produced a declaration

¹¹⁷ In that case, they also agreed that the identification of these people should have been as quick as possible.

¹¹⁸ UN doc. S/1997/742, Annex I, Report of the Secretary-General on the situation concerning Western Sahara. *"The parties agree that persons from all other tribal groups from census categories H, I and J may come forward to be identified. The parties agree that the Special Representative of the Secretary-General shall notify the parties of the results by number, but not name, of the identification process to date. The parties acknowledge that, from the time of the original settlement plan, they have understood that credible oral testimony to the Identification Commission would be required, and the parties agree that in the identification process oral testimony will be received and considered by the Identification Commission, as provided for in the settlement plan"*.

¹¹⁹ UN doc. S/1997/742, Annex I, Report of the Secretary-General on the situation concerning Western Sahara: *"[...] no more than 2,000 individuals may be confined or contained on the territory of Western Sahara east of the sand berm and no more than 300 individuals on the territory of Mauritania. Frente POLISARIO armed forces over and above the number designated by the Special Representative of the Secretary-General for confinement or containment in Western Sahara east of the sand berm and in Mauritania shall be confined or contained on the territory of Algeria [...]"*

regarding the United Nations' role¹²⁰ during the same period. Moreover, the disputants agreed to a bunch of practical procedures related to the voters identification process and the Identification Commission.

Particularly, as can also be seen from the final document of the Houston Accords, the entire Code of Conduct signed in Houston was previously drafted by the UN Special Envoy James Baker. Acting as a real formulator, he wrote down the text and asked the parties to criticize or to revise it: *"This Code of Conduct formulated and issued by the Special Representative of the Secretary-General after consultation with the two Parties shall govern the conduct and behavior, during the referendum campaign, of the Parties"*¹²¹.

However, even though some important issues had been discussed and apparently settled, doubts remained over the parties' willingness to stay with the UN Settlement Plan. Indeed, even though so many issues had been tackled, the disputants basically decided to follow the indications contained in the Settlement Plan. Since its provision still needed implementation, pessimism among the UN mounted. Particularly, the issue of voters identification still threatened the agreements reached in Lisbon and Houston.

In any case, the identification process resumed at the end of 1997. Soon problems arose: Moroccan government was helping¹²² individuals from contested tribal groupings to apply for obtaining the voting rights in order to take part in the referendum. Shortly after the Identification Commission got blocked by the huge amount (almost 65,000) of applications received from individuals from contested tribes. This behavior definitely violated the Houston Agreement, but the Acting Special Representative of the Secretary-General (ASRSG) Erik Jensen refused to denounce the Moroccan authorities.

Morocco also accused MINURSO of prejudice and reached the point of organizing a press campaign against the mission. However, the UN (both the Secretariat and the Security Council),

¹²⁰ UN doc. S/1997/742, Annex III, Report of the Secretary-General on the situation concerning Western Sahara. "[...]the Parties agree that the powers and authorities of the United Nations during the transitional period, as described in the settlement plan, and during the referendum campaign, as described in the code of conduct, shall apply to ensure, among other things, that there shall be complete freedom of speech and assembly, and of the press, as well as freedom of movement of personnel and property into, out of and within the Territory, thus creating a climate of public tranquillity within which a referendum free of all constraints, intimidation and harassment can be organized and conducted by the United Nations".

¹²¹ UN doc. S/1997/742: "Results of the fourth round of direct talks Houston, Texas, 14-16 September 1997". Present also in: Annex III, Report of the Secretary-General on the situation concerning Western Sahara: S/1997/742.

¹²² There were evidences that Morocco was helping those applicants by transporting them to the voters identification centres.

being conscious of the Moroccan strategy¹²³, did not take a steadfast position because MINURSO was a mission that required the parties' consensus since it operated under Chapter VI of the UN Charter.

In order to unravel the knot, in 1998 James Baker, who previously helped to solve the issue of East Timor autonomy, secretly visited King Hassan II of Morocco. The Special Envoy wanted to investigate whether Morocco was still convinced that the provisions of the Settlement Plan and the holding of the referendum were the best solutions for Morocco's political legitimization in Western Sahara. Apparently, Baker also offered the King the possibility to put other options on the table of discussion; however, the King reaffirmed Morocco's commitment to stay with the Settlement Plan for the moment.

Trying to solve another impasse, the UN Secretary-General presented to the parties a "package" of measures that included four protocols: one regarding the identification of applicants from contested groupings, one on appeals process, another protocol on refugee repatriation, and a final protocol regarding the situation in the territory during the transitional period. This "package" was supposed to be agreed upon by the parties by mid-November 1998¹²⁴ and represented an attempt to speed-up the referendum process, putting pressure on Moroccan government in order also to block its tactic of delaying the identification process.

As a response, Polisario welcomed the "package" of protocols by the UN and quickly accepted it. On the contrary, Morocco soon demonstrated its irritation by expressing, in a memorandum, several concerns about those protocols. The UN Secretary-General Kofi Annan officially visited the region from 7 to 12 November 1998 in order to convince the Moroccans to accept the UN proposal.

The situation was clarified after several negotiations, between the Moroccan government and the UN delegation¹²⁵, ended up when Morocco accepted in principle the "package" on 22 March 1999. However, King Hassan II acceptance was linked with the discussion on some amendments to the protocols envisaged by the "package". Following some negotiations, the amended version of those protocols were adopted on 26 April 1999¹²⁶: Morocco and the Polisario

¹²³ Morocco and the Polisario Front received partial results of the identification process after having signed the Houston Agreements. Morocco knew that the Identification Commission would have refused the application of the 65,000 individuals from the contested groupings, therefore the Moroccan government decided to bring more and more applicants to the identification centres in order to block the process.

¹²⁴ The UN Security Council adopted also Resolution 1204 (1998) that called upon the parties to accept the "package" by mid-November 1998.

¹²⁵ Composed by the UN Secretary-General Kofi Annan, his Personal Envoy James Baker and the Special Representative Robin Kinloch.

¹²⁶ UN Doc. S/1999/483, Add.1, Report of the Secretary-General on the situation concerning Western Sahara.

Front accepted this version, respectively on 7 May 1999 and on 28 April 1999, with two letters informing the UN Secretary-General of their favorable positions.

After the letters of acceptance eventually arrived at the UN Headquarters, both Polisario and Morocco reached the conclusion that, by then, the provisions of the Settlement Plan were deeply into question. Indeed, the very long process of adoption of the UN “packages” represented the rejection of the “Houston spirit”, that in turn marked the maintenance of the Settlement Plan provisions. Consequently, the already mentioned “third option” envisaged by Kofi Annan¹²⁷ got a foothold. The death of King Hassan II in July 1999 was also important in this sense, being Hassan II the most important supporter for Morocco’s sovereignty over Western Sahara.

In this perspective, by the end of 1999, the UN Secretary-General report examined the situation of Western Sahara implying some sort of pessimism: *“Under the circumstances, the prospect of holding the referendum within a reasonable period of time, instead of becoming closer, has become even more distant. The problem posed by the current number of appeals and the opposing positions taken by the parties on the issue of admissibility seem to allow little possibility of holding the referendum before 2002 or even beyond”*¹²⁸.

At the beginning of the new millennium, the Identification Commission released the official figures of eligible voters: 86,386 people. However, still the Kofi Annan expressed¹²⁹ some sort of pessimism regarding the possible date for the holding of the referendum: *“[...] the timetable envisaged is no longer valid, as indicated in my previous report, and the date for the referendum, which has been repeatedly postponed since 1991, can still not be set with certainty at this juncture [...]”*.

In this climate the Secretary-General decided to ask his Personal Envoy James Baker to start negotiations with the disputants in order to solve the dispute by exploring new means or ways: *“[...] I therefore intend to ask my Personal Envoy, James A. Baker III, to consult with the parties and taking into account existing and potential obstacles, to explore ways and means to achieve an early, durable and agreed resolution of their dispute, which would define their respective rights and obligations in Western Sahara [...]”*¹³⁰.

Consequently, James Baker visited Western Sahara from April 8 to 11, 2000, where he met Morocco’s and Polisario’s representatives. The Personal Envoy was disappointed by the meetings

¹²⁷ It was also one of the main reasons under James Baker’s appointment.

¹²⁸ UN doc. S/1999/1219, Report Of The Secretary-General On The Situation Concerning Western Sahara.

¹²⁹ UN doc. S/2000/131, Report Of The Secretary-General On The Situation Concerning Western Sahara.

¹³⁰ UN doc. S/2000/131, Report Of The Secretary-General On The Situation Concerning Western Sahara.

he had mainly because of the obstacles put by Moroccan government, such as the delaying tactics that it had adopted¹³¹; however, he asked the parties, as well as Algerian and Mauritanian governments, to convene to a face-to-face meeting¹³² in London on 14 May 2000. The discussions had been inconclusive since the parties only agreed to held another meeting one month later still in London.

The second meeting took place on 28 June 2000 with the aim of finding concrete solutions to the long-lasting problem of Western Sahara either by resorting to the Settlement Plan implementation or by seeking other ways to achieve a shared and durable ending to the Western Sahara dispute. In this occasion Baker requested the disputants to put their proposals on the negotiation table.

On one hand, the Polisario Front highlighted two major points of controversy: the repatriation of refugees and the slowness of the appeals process. Concerning the former, the Polisario Front reaffirmed its commitment to support and to cooperate with the Office of the United Nations High Commissioner for Refugees (UNHCR) in executing this repatriation. With regard to the latter point of controversy, the Polisario representatives reaffirmed the movement's willingness to comply with the United Nations Settlement Plan implementation, but they also stated the movement's readiness to explore different proposals (decided by the United Nations) in order to ameliorate the appeals process.

Moreover, the representatives of the liberation movement reiterated Polisario's commitment to the Houston Agreements and the principles of confidence-building developed since Baker's appointment. In addition, Polisario expressed its desire about the fact that the UN Security Council should ensure parties' recognition of the referendum results. However, the Polisario Front did not submit any concrete proposal to the UN Secretary-General Personal Envoy aimed at solving the points of controversy highlighted previously.

On the other hand, Morocco singled out four areas of controversy that impeded the Settlement Plan implementation, particularly: the appeals process, the annulment of the negative results of some applicants (7,000) and the consequent reexamination, the question of voters, not

¹³¹ These tactics had been carried on with the acquiescence of both France and the United States, worried about the transition of the Moroccan Kingdom after King Hassan II death. The two permanent members of the Security Council reached also the conclusion that, even under a new sovereign, Morocco's positions about the Western Sahara issue would not have changed. Both France and the United States, consequently, realized that Morocco would have never accepted the results of the referendum. Therefore, the adoption of a "third option" would have been fundamental in order to unravel the knot.

¹³² The first face-to-face meeting between the parties since the direct talks of 1997.

included in the identification process, who had reached majority after December 1993¹³³ and the issue of Saharan refugees' repatriation.

Regarding the first area of difficulty, the appeals process, Morocco stressed the fact that the appeals should be considered only when they regarded the procedure, therefore their area of admissibility should have been limited. In addition, as concerns the issue of refugees' repatriation, Morocco¹³⁴ stated that this repatriation could not regard the territory east of the berm because of security issues. Nonetheless, Morocco expressed its willingness to complete the total refugees' repatriation by the end of the year.

Finally, the Kingdom of Morocco, as well as Polisario's representatives, did not put forward any sharable proposal to solve the various problems of the UN Settlement Plan and its implementation.

THE DEVELOPING OF A POLITICAL SOLUTION

After having received the parties' proposals, Baker identified other unsolved points of difficulty, namely: the acceptance of the referendum results, the release of respective prisoners of war and the amnesty for Saharan political detainees, and the implementation of the Code of Conduct for the referendum campaign. The mediator later expressed anxiety about the fact that both Morocco and the Polisario Front had always failed to maintain a peaceful dialogue between them and about their incapacity to propose solutions to the issues raised. He believed that, even though the disputants had always affirmed their willingness and commitment to cooperate with the United Nations, their moves and decisions had demonstrated the opposite. Baker also referred to the UN Secretary-General Kofi Annan about the fact that, according to his point of view, both parties did not consider the outcome of the mediation as a win-win solution, but rather a total victory or a total defeat:

"According to him, neither party had shown any disposition to depart from the "winner-take-all" mentality or appeared willing to discuss any possible political solutions in which each would get some, but not all, of what it wanted and would allow the other side to do the same. After asking each party for concrete proposals to bridge their differences and receiving none, my

¹³³ In this sense, Morocco believed that those individuals should be granted of voting rights in order to permit the participation of all Saharans in the referendum. Furthermore, Morocco, in the name of the right of self-determination, affirmed that if any Saharans, who might have right to vote, were not allowed to do so, it would not take part in the referendum.

¹³⁴ Morocco, as also Polisario did, reiterated its commitment to collaborate with the Office of the United Nations High Commissioner for Refugees (UNHCR)

Personal Envoy expressed the view that, in the light of the above, the meeting, instead of resolving problems, had in fact moved things backwards as it had deepened the differences between the parties”¹³⁵.

Importantly, the UN Secretary-General Personal Envoy eventually asked Morocco and the Polisario Front to meet again with the aim of reaching a sort of political solution, highlighting also that several options existed for in such case. In his view, a political solution not only could have prevented a return to violence in Western Sahara, but would also have led to several different options other than the two extremes: a total integration of Western Sahara with Morocco or the full independence of the disputed territory.

Baker managed to convince the parties to discuss a political solution in a third meeting that took place on 28 September 2000 in Berlin. In his view, both the two extreme options (Western Sahara’s integration with Morocco or independence) were impossible to be agreed upon, therefore the necessity of a “third option”, a political solution, was necessary.

Furthermore, he also reassured the parties that, since the rule of “nothing is agreed until everything is agreed”, this possible kind of solution would not have impaired their positions, helping them to save face. In particular this is one of the most important feature of the formulative mediation.

Shortly before the third meeting between the parties, under the aegis of James Baker, the UN Security Council adopted Resolution 1309 (2000)¹³⁶, extending MINURSO’s mandate and expecting the parties to meet *“the parties will meet in direct talks under the auspices of the Secretary-General’s Personal Envoy to try to resolve the multiple problems relating to the implementation of the Settlement Plan and to try to agree upon a mutually acceptable political solution to their dispute over Western Sahara”*¹³⁷.

The Berlin meeting began with Baker’s opening statement in which the UN Secretary-General Personal Envoy made a reference to UNSC Resolution 1309 (2000), affirming that it would have been the ground for the meeting. He, then, provided his opinion regarding the various obstacles to the UN Settlement Plan implementation, stating that both Morocco and the Polisario Front had contributed to raise those obstacles.

¹³⁵ UN doc. S/2000/683, Report of the Secretary-General on the situation concerning Western Sahara.

¹³⁶ This was the first UNSC Resolution in which the Security Council use the words “political solution” related to the case of Western Sahara.

¹³⁷ UN Security Council Resolution 1309 (2000).

After his opening statement, Baker leave the floor to both parties. Basically, while the Polisario Front believed that the obstacles faced in UN Settlement Plan implementation would have been overcome through cooperation, Morocco strongly believed otherwise¹³⁸.

Baker illustrated to the parties that self-determination could have been accomplished in different ways: through the resumption of war, through fair and free elections, or through an agreement after a negotiation. Then, he asked the disputants whether they were still willing to pursue the latter option while maintaining the UN Settlement Plan provisions. Even with regards to this question, the parties were discordant: the Polisario delegation reaffirmed the movement commitment to the plan, while Morocco severely criticized how the plan had been implemented so far¹³⁹ and was interested in exploring different ways and means to solve the conflict in Western Sahara (bearing in mind what the UN Security Council affirmed in Resolution 1309 (2002). However, the focal point of Morocco's position was the respect of its national sovereignty and territorial integrity: “[...] Morocco was prepared to initiate a sincere and frank dialogue with the other party on the dispute that had divided them for almost 25 years. Morocco reaffirmed its readiness to explore every avenue, with the assistance of my Personal Envoy, to work out a lasting and definitive solution, that would take account of Morocco's sovereignty and territorial integrity, and the specifics of the region, in compliance with the democratic and decentralization principles that Morocco wished to develop and apply, beginning with the Sahara region [...]”¹⁴⁰.

As a consequence, the Polisario delegation rejected the Moroccan idea and reaffirmed its willingness to continue a dialogue within the structure of the UN Settlement Plan. Instead, the UN Secretary-General Personal Envoy welcomed the opinion put forward by Morocco and reassured the Polisario Front that the maintenance of the plan was a priority, but it was also time to explore new ways (other than the plan itself) to facilitate the solution of the dispute over Western Sahara. However, soon after the meeting, Polisario representatives sent a letter to Kofi Annan reaffirming the movement's efforts to continue the negotiations with Morocco, under the aegis of James Baker, within three main frameworks: the UN Settlement Plan, the Houston Agreements of 1997 and the four protocols of May 1999.

¹³⁸ UN doc. S/2000/1029, Report of the Secretary-General on the situation concerning Western Sahara: “[...] the Moroccan party was of the opinion that, despite all good will, the difficulties faced in the implementation of the plan could not be overcome[...].”

¹³⁹ UN doc. S/2000/1029, Report of the Secretary-General on the situation concerning Western Sahara: “[...] While also committed to the plan, Morocco expressed the view that the way in which the plan was being implemented meant that two thirds of the Saharan population would be excluded from the referendum [...]”.

¹⁴⁰ UN doc. S/2000/1029, Report of the Secretary-General on the situation concerning Western Sahara.

Under those circumstances, Baker took advantage of this openness in Moroccan positions and advocated for a devolution of authority from Morocco to the Saharans: “[...] *it is the view of my Personal Envoy, which I share, that further meetings of the parties to seek a political solution cannot succeed, and indeed could be counterproductive, unless the Government of Morocco as administrative Power in Western Sahara is prepared to offer or support some devolution of governmental authority, for all inhabitants and former inhabitants of the Territory, that is genuine, substantial and in keeping with international norms [...]*”¹⁴¹.

In addition, Baker warned the Moroccan government that MINURSO personnel would have begun hearing the hanging appeals if Morocco had not endorsed such proposal. This attitude by the UN Secretary-General Personal Envoy was dictated by the fact that he understood that Morocco merely used the appeals process¹⁴² in order to block the negotiation process and the holding of the referendum. Therefore, Baker was trying to put pressure on the Moroccan government, forcing it to discuss a political solution (devolution of authority) that would have not jeopardized its positions while, at the same time, this solution would have unraveled the knot.

In the first months of 2001 no progress had been made by the parties in trying to solve the situation of Western Sahara. James Baker was busy with the United States Presidential elections of 2000 so he was not able to carry on his duties with regards to Western Sahara. Anyway, as soon as the Bush administration was installed, Baker undertook a visit to Morocco and Algeria in order to meet respectively with the Moroccan government and with the Polisario’s representatives in Tindouf¹⁴³.

Even though in the Berlin meeting of September 2000 the Moroccan delegation seemed to be willing to offer some sort of political authority to Western Sahara (while respecting Morocco’s territorial integrity and national sovereignty), by May 2001 Morocco still had not propose any concrete offer to devolve power to Western Sahara. The UN Secretary-General Personal Envoy was, thus, disappointed by the Moroccan behavior and decided that no more time would have been wasted.

¹⁴¹ UN doc. S/2000/1029, Report of the Secretary-General on the situation concerning Western Sahara.

¹⁴² Anna Theofilopoulou, *The United Nations and Western Sahara: A Never-ending Affair*, United States Institute of Peace, 2006.

¹⁴³ During this visit, Baker met also with Algerian President Abdelaziz Bouteflika.

THE FRAMEWORK AGREEMENT

Therefore, as the formulative mediator he was, he drafted the later called Framework Agreement on the Status of Western Sahara, famously known as the “Baker Plan”. The document, which was merely a draft, foresaw the total integration of Western Sahara into Morocco territory, even though the legislative, executive and judicial powers on matters regarding local administration remained in the hands of Western Sahara population. Morocco would have maintained exclusive powers¹⁴⁴ with regards to foreign relations, national security and external borders.

The local administration would have been divided in an Executive, with the duty to administer the territory, an Assembly, vested with legislative powers and different courts, whose judges would have had Sahrawi origins. As stated in the draft: *“In Western Sahara the executive authority shall be vested in an Executive, who shall be elected by a vote of those individuals who have been identified as qualified to vote by the Identification Commission of the United Nations Mission for the Referendum in Western Sahara, and whose names are on the United Nations provisional voter lists (completed as of 30 December 1999) without giving effect to any appeals or other objections. To qualify as a candidate for Executive, one must be an individual who has been identified as qualified to vote as aforesaid and whose name is on said provisional voter lists. The Executive shall be elected for a term of four years. Thereafter, the Executive shall be elected by majority vote of the Assembly. The Executive shall appoint administrators in charge of executive departments for terms of four years. The legislative authority shall be vested in an Assembly, the members of which shall be directly elected by voters for terms of four years”*¹⁴⁵.

In addition, Baker proposed that this arrangement would have been subject to popular expression. In this sense, a referendum¹⁴⁶ would have been organized within five years following the implementation of this Baker Plan.

On 5 May 2001 the UN Secretary-General Personal Envoy informally met with Polisario representatives and presented them the Framework Agreement. Soon after, Polisario Secretary-

¹⁴⁴ UN doc. S/2001/613, Annex I, Report of the Secretary-General on the situation concerning Western Sahara: *“The Kingdom of Morocco will have exclusive competence over foreign relations (including international agreements and conventions) national security and external defence (including determination of borders, maritime, aerial or terrestrial and their protection by all appropriate means) all matters relating to the production, sale, ownership or use of weapons or explosives and the preservation of the territorial integrity against secessionist attempts whether from within or without the territory. In addition, the flag, currency, customs, postal and telecommunication systems of the Kingdom shall be the same for Western Sahara”*.

¹⁴⁵ UN doc. S/2001/613, Annex I, Report of the Secretary-General on the situation concerning Western Sahara.

¹⁴⁶ Everyone who lived in Western Sahara since 2000 would have been entitled the right to vote.

General Mohamed Abdelaziz responded to Baker proposal by saying that “[...] *anything other than independence meant integration with Morocco* [...]”¹⁴⁷.

Following this meeting, the UN Secretary-General Personal Envoy had other talks with the liberation movement, precisely with Polisario’s Coordinator with MINURSO, Emhamed Khaddad, who sent two letters (one directed to Baker and the other one directed to Kofi Annan) in which the Polisario Front reiterated its positions, but also advanced some official proposals¹⁴⁸ with the aim of boosting the implementation of the UN Settlement Plan.

These proposals regarded several aspects of the Western Sahara issue, namely: the appeals process, the repatriation of refugees, mutual respect of the referendum results, the confidence-building measures, the humanitarian issues and the post-referendum guarantees. However, the attitude of the UN Secretary-General toward the idea of maintaining the UN Settlement Plan was not so favorable now more than ever, after the drafting of the Framework Agreement. Consequently, the proposals put forward by the Polisario Front proved to be almost totally useless.

The Framework Agreement, presented to the Polisario Front on 5 May, were submitted also to the Algerian government, which responded quite positively, but also highlighted some points of concerns. President Bouteflika considered the draft to be too biased and imbalanced in favor of a Western Sahara integration with Morocco, meaning that the right to self-determination would have been ignored and meaning that Baker had not followed his mandate by considering only a political solution¹⁴⁹.

After these developments, Baker informed the UN Security Council on the draft of the Framework Agreements. He described this document as a tool to achieve self-determination in a medium time span because firstly a couple of years of self-government (autonomy) for Western Sahara were necessary; thus, this proposal was not perfect, but it was a fair, durable and equitable solution to the long-lasting problem of UN Settlement Plan implementation. He then highlighted that it was time to adopt a different approach with respect to ruinous UN Settlement Plan.

Consequently, the Security Council adopted Resolution 1359 (2001) in which it took into consideration the UN Secretary General Report on the situation concerning Western Sahara (UN

¹⁴⁷ UN doc. S/2001/613, Report of the Secretary-General on the situation concerning Western Sahara.

¹⁴⁸ UN doc. S/2001/613, Annex IV, Report of the Secretary-General on the situation concerning Western Sahara.

¹⁴⁹ UN doc. S/2001/613, Annex III, Report of the Secretary-General on the situation concerning Western Sahara: “*The Algerian memorandum makes three points: (a) that the proposed framework agreement favours the notion and, indeed, prepares the ground for eventual integration of Western Sahara with Morocco; (b) that the framework goes against the principle of self-determination; and (c) that the Personal Envoy of the Secretary-General has not followed his mandate, requiring him to work on the “double track”, but has focused instead solely on a political solution.*”

doc. S/2001/613) with its annexes and encouraged “*the parties to discuss the draft Framework Agreement and to negotiate any specific changes they would like to see in this proposal, as well as to discuss any other proposal for a political solution to arrive at a mutually acceptable agreement*”¹⁵⁰.

Following the adoption of this resolution, the UN Secretary-General Personal Envoy organized a meeting, from August 27 to 29, 2001, between him, the Polisario Front, Algeria and Mauritania¹⁵¹ in Baker’s ranch near the small municipality of Pinedale, Wyoming. Even in this case, Algerian delegation reaffirmed general views about the draft Framework Agreement, without engaging in a detailed discussion over it. Algeria however pledged to send specific explanations later. The other observer, Mauritania, merely promised to back any proposal that would build up peace and stability in the territory.

The Polisario Front, as the Algerians, was unwilling to examine the draft Framework Agreement in details. Indeed, the liberation movement reiterated that the document would have led to Western Sahara total integration with Morocco’s territory, something that was absolutely unacceptable for the Sahrawi resistance. As well as Algeria, also the Polisario Front promised to send to Baker its specific clarifications on the proposed draft Framework Agreement.

In the end, this meeting was unsuccessful. This was particularly clear when, in the first week of October 2001 both the Polisario Front and Algeria (respectively on October 4 and 7) sent to James Baker their comments on specific details of the Framework Agreement: they totally rejected¹⁵² the draft document. The situation became further complicated by the proposal, put forward by Algeria¹⁵³, of discussing a division of Western Sahara territory.

Subsequently, the Personal Envoy went to Rabat in order to inform King Muhammed VI about the recent developments with regards to the draft Framework Agreement and the Algerian suggestion of discussing a possible territorial division. Baker also briefed Morocco about the Polisario’s proposals to overcome the obstacles impeding the implementation of the UN Settlement Plan¹⁵⁴. Baker took part in two meetings with Morocco: in the first occasion the King predictably

¹⁵⁰ UN Security Council Resolution 1359 (2001).

¹⁵¹ Morocco was not invited since Baker feared the possibility that the Moroccan would have provoked the Polisario representatives, causing their walk out.

¹⁵² UN doc. S/2002/41, Annex I and II, Interim report of the Secretary-General on the situation concerning Western Sahara.

¹⁵³ This idea was presented by Algeria President Bouteflika on November 2 when he visited the Baker Institute in Houston, Texas. Moreover, this proposal was also supported by the Polisario Front.

¹⁵⁴ UN doc. S/2001/613, Annex IV, Report of the Secretary-General on the situation concerning Western Sahara.

rejected these proposals, while after the second meeting it declined the Algerian idea of a territorial division of Western Sahara.

The UN Secretary-General Personal Envoy James Baker, by going back and forth from Pinedale to Rabat, informing each party about the other's position or proposal, demonstrated to adopt also a facilitative mediation strategy. He, indeed, set the venue and put the parties in connection. Therefore, as already said in chapter 2 of this thesis, the mediation styles always merge with each other in order to obtain a positive outcome.

Anyway, Baker, disappointed by the failure of his draft Framework Agreement, resorted to the Security Council, presenting¹⁵⁵ four possible options that in his mind were still available in order to achieve a durable and mutually agreed resolution of the Western Sahara dispute. These options, as outlined in UN Secretary-General report of 19 February 2002, were¹⁵⁶: the implementation of the UN Settlement Plan but without the parties' accord; the nonnegotiable revision of the draft Framework Agreement that considered the parties' interests and its presentation to the disputants regardless of their opinion; the division of the territory using as a basis the agreement between Morocco and Mauritania of 1976¹⁵⁷; the cessation of the MINURSO operations, recognizing its failure after more than ten years of stalemate.

Those options were quite radical in their nature and basically each of them required the United Nations Security Council to act toughly against one party or the other, creating discontent but also constituting a dangerous precedent of international law. Specifically, option one and option three would have inevitable angered the Kingdom of Morocco¹⁵⁸, while the second option would have irritated Algeria¹⁵⁹ and the Polisario Front¹⁶⁰. Regarding the last option, nobody was willing to accept it. In addition, it represented a sort of "admission of inability" by the United Nations in

¹⁵⁵ Baker briefed the UN Security Council on 27 February 2002, shortly after the UN Secretary-General report.

¹⁵⁶ UN doc. S/2002/178, Report of the Secretary-General on the situation concerning Western Sahara.

¹⁵⁷ UN doc. S/2002/178, Report of the Secretary-General on the situation concerning Western Sahara: "*As a third option, the Security Council could ask my Personal Envoy to explore with the parties one final time whether or not they would now be willing to discuss, under his auspices, directly or through proximity talks, a possible division of the Territory[...]. Were the Security Council to choose this option, in the event that the parties would be unwilling or unable to agree upon a division of the Territory by 1 November 2002, my Personal Envoy would also be asked to thereafter show to the parties a proposal for division of the Territory that would also be presented to the Security Council. The Council would present this proposal to the parties on a non-negotiable basis. This approach to a political solution would give each party some, but not all, of what it wants and would follow the precedent, but not necessarily the same territorial arrangements, of the division agreed to in 1976 between Morocco and Mauritania. Were the Security Council to choose this option, MINURSO could be maintained at its present size, or it could be reduced even more*".

¹⁵⁸ Actually Morocco did not approve any of the four option except for option two.

¹⁵⁹ Algeria did not even consider the second option, but supported the third one.

¹⁶⁰ Polisario supported option one and was keen on option three. However, it totally rejected option two.

dealing with a dispute, therefore the Security Council would have never choose that course of action.

The four options illustrated by Annan's Personal Envoy were also the results of Baker dissatisfaction over the never ending stalemate of Western Sahara. He was tired of dealing with two disputants that were still stuck on their respective positions and still were focused on "winning" despite being engaged in negotiations that would have led to a mutually acceptable outcome. From 2002 onwards, several rumors about a possible Baker resignation mounted more and more.

Despite the diplomatic effort made by France, Great Britain and (eventually) the United States, the UN Security Council was blocked and spent the first five months of 2002 trying to decide how to deal with those options. Knowing about this stalemate of the Security Council, the UN Secretary-General Kofi Annan, in accordance with his Personal Envoy, reiterated in his report of April 2002 the need to choose one of the four options previously outlined. He also pointed out that the Security Council should not change any of those options requiring the parties' consent¹⁶¹.

Finally, in July 2002, the Security Council came out with Resolution 1429 (2002), which not only decided not to choose any of the four options envisaged by Baker, but also invited Baker to find another political solution for the Western Sahara dispute¹⁶². The Security Council, moreover, reiterated its readiness to contemplate any possible mean to sustain self-determination and gave Baker six months to produce a feasible solution.

THE PEACE PLAN

Soon after, Baker started working together with other experts¹⁶³ on another political solution, a draft document requested by the Security Council in its Resolution 1429 (2002). In January 2003 he officially visited the region where he met Moroccan and Polisario representatives

¹⁶¹ UN doc. S/2002/467, Report of the Secretary-General on the situation concerning Western Sahara, par. 22: "My Personal Envoy stands ready to undertake the activities that will be required under the option the Security Council chooses, in order to steer the parties towards a resolution of their dispute over Western Sahara, provided that the Council does not support any changes to options one, two or three that would require the concurrence of the parties. Such changes, as my Personal Envoy told the Council on 27 February 2002, would simply encourage a continuation of the conflict and the current stalemate. As always, I intend to lend all my support to my Personal Envoy in his difficult task".

¹⁶² UN Security Council Resolution 1429 (2002), par. 1: "The Security Council [...] Continues to support strongly the efforts of the Secretary-General and his Personal Envoy to find a political solution to this long-standing dispute, invites the Personal Envoy to pursue these efforts taking into account the concerns expressed by the parties and expresses its readiness to consider any approach which provides for self-determination that may be proposed by the Secretary-General and the Personal Envoy, consulting, as appropriate, others with relevant experience [...]"

¹⁶³ Among them there was Hurst Hannum, professor of law at Tufts University, who had also contributed to the autonomy agreement in East Timor crisis.

in order to present them this new proposal entitled “Peace plan for self-determination for the people of Western Sahara”¹⁶⁴ and soon called the second Baker Plan.

This new political solution was thought not to disappoint anyone, even though Baker knew that nobody would have been completely satisfied by this proposal that, in his mind, was quite reasonable for both the parties. He tried to give each disputant an equitable chance to gain the majority of the votes in a referendum on self-determination after a period of self-government (autonomy). Even though the very basis was the same, this new draft Peace Plan was more specific than the Framework Agreement in two main aspects: firstly, the voters for the referendum for the final status of Western Sahara would have been those on the UN list of provisional voters, those on the repatriation list¹⁶⁵, plus those who have been continuous residents in the territory since the end of 1999 and, secondly, the fact that when Baker presented to the parties this new document he presented it on a nonnegotiable basis¹⁶⁶, instead when he presented the Framework Agreement he asked Morocco and Polisario (but also Algeria and Mauritania) for changes.

Consequently, in May 2003, after having received the document and having studied it, the disputants, together with Algeria and Mauritania, submitted to Baker their considerations and their acceptance or denial to the Peace Plan. President Bouteflika was satisfied by the proposal and welcomed it very favorably, criticizing also the UN’s inability toward the Settlement Plan implementation. In this perspective, Algeria wanted a strong presence of the United Nations in Western Sahara in order to force Morocco to comply with its duties and to protect Polisario (possible) administration¹⁶⁷.

On the opposite side, the Polisario Front condemned the Peace Plan, being still certain that the UN Settlement Plan was the best solution for the dispute over Western Sahara. The liberation movement sent, as a response, its own proposals¹⁶⁸ that, however, implied an enforcement of the final referendum results by the UN Security Council. Notwithstanding, this would have meant acting under Chapter VII of the UN Charter, regarding the use of coercive means in order to solve a dispute¹⁶⁹. Using the words of Annan: “[...] *The chief objection of the Frente POLISARIO to the peace plan seems to be that it is not the settlement plan* [...]”¹⁷⁰.

¹⁶⁴ UN doc. S/2003/565, Annex II, Report of the Secretary-General on the situation concerning Western Sahara.

¹⁶⁵ Drafted by the UNHCR.

¹⁶⁶ Ahmed Boukhari, *The International Dimension Of The Conflict Over The Western Sahara And Its Repercussions For A Moroccan Alternative*, Real Instituto Elcano, 2004.

¹⁶⁷ Anna Theofilopoulou, *The United Nations and Western Sahara: A Never-ending Affair*, United States Institute of Peace, 2006.

¹⁶⁸ UN doc. S/2003/565, Annex III, Report of the Secretary-General on the situation concerning Western Sahara

¹⁶⁹ Morocco would have never accepted it.

¹⁷⁰ UN doc. S/2003/565, Report of the Secretary-General on the situation concerning Western Sahara, par. 54.

Morocco, on its behalf, responded firstly by considering that Western Sahara was Moroccan (referring to it as “the southern provinces”) and then by condemning even the fact that independence was an option included in the ballot in the referendum on the final status of the territory. However, since UN Security Council Resolution 1429 (2002) required a political solution that would have promoted self-determination, it was impossible that the envisioned referendum would not have contemplated the option of independence. The solution was found by Kofi Annan by including a third ballot option between that of integration and that of independence, namely the continuation of autonomy¹⁷¹.

When the Security Council was presented with such a reactions and a request by the UN Secretary-General and his Personal Envoy to take a strong position¹⁷², the process stalled. Further negotiations, according to Baker would have been useless since they would have meant another waste of time: the parties, after more than one decade of negotiations, have made almost no progress and their positions were too radical.

The UN Security Council therefore, decided to take two more months (until July 2003) to adopt a resolution on the issue and, in the meantime, an harsh debate among the Council members exploded. Morocco’s allies (for instance France, Cameroon, Guinea, and Bulgaria) lobbied against the plan, pushing for pursuing the negotiations. On the other side, the United Kingdom, the United States, Spain, Chile and Germany supported the second Baker Plan and Baker’s mediation style. In between these two fronts, with an uncertain attitude, stood the rest of the Security Council¹⁷³.

In those months, Morocco was convinced that the Polisario Front had rejected Baker’s document, but actually Polisario did not give an official reply in its letter dated March 2003. Consequently, when Polisario knew about Morocco’s misperception, hastily accepted the plan in the first days of July 2003 and took Moroccans by surprise. Anyway, by the end of July the Council have adopted Resolution 1495 (2003) unanimously.

This resolution praised explicitly the efforts of the UN Secretary-General and his Personal Envoy, but offered a quite ambiguous support to the Peace Plan. Indeed, the UN Security Council used a particular formula, not using the word “endorse”, but simply saying that it “*similarly supports their*”¹⁷⁴ *Peace plan for self-determination of the people of Western Sahara as an optimum*

¹⁷¹ However, Morocco rejected this solution since, according to Moroccans, the introduction of this ballot option would have drained votes from those in favour of integration.

¹⁷² UN doc. S/2003/565, Report of the Secretary-General on the situation concerning Western Sahara, par. 57: “[...]it should be acknowledged that the Security Council is not going to solve the problem of Western Sahara without asking that one or both of the parties do something they are not otherwise prepared to do”.

¹⁷³ China, Mexico, Syria, Russia, Angola and Pakistan.

¹⁷⁴ The UN Secretary-General and his Personal Envoy.

political solution on the basis of agreement between the two parties”¹⁷⁵. This last part of the sentence (“as an optimum political solution on the basis of agreement between the two parties”) was added after Russian requests, but triggered, in the following years, Morocco’s demands for additional negotiations.

Moreover, by saying that the UN Security Council “*Calls upon the parties to work with the United Nations and with each other towards acceptance and implementation of the Peace plan*”¹⁷⁶, the Moroccan government believed that its acceptance of the plan was necessary in order to adopt it. Consequently, Rabat pushed for further talks, while Polisario and Algeria refused to take part in those talks, until Morocco formally accepted the Peace Plan. In turn, King Mohammed VI asked the UN Security Council some time to submit Moroccan considerations to the resolution.

After few months, in October 2003 a Moroccan delegation, led by the Minister of Foreign Affairs Mohammed Benaissa, met with James Baker in Houston in order to discuss about some possible changes to the second Baker Plan. This meeting produced no positive results but, by December 2003, Morocco sent a counterproposal, called “draft Autonomy Status”, to the UN Secretary-General Personal Envoy.

According to the Kingdom of Morocco, this solution would have granted autonomy to the Saharan people and, at the same time, would have guaranteed Morocco’s national unity and territorial integrity. It was similar to the Framework Agreement¹⁷⁷, but did not include the ballot option of independence¹⁷⁸ in the final status referendum. Moreover, this counterproposal provided more exclusive powers¹⁷⁹ to the Moroccan government than those envisaged by the two Baker plans. In addition, Morocco did not foresee a primary role for the United Nations during the period of transition toward the referendum.

Soon Baker was disappointed by this counterproposal and, therefore, he rejected it, asking Morocco to present another, more feasible and sharable, solution. By the end of 2003 other meetings were set up between the UN Secretary-General Personal Envoy and the Kingdom of Morocco, but they resulted to be totally unsuccessful since Morocco’s counterproposals were basically identical to the first one and, according to Baker, could not be used as the basis for consultation with Polisario and Algeria. Considering this inability to move forward, Morocco, on 9

¹⁷⁵ UN Security Council Resolution 1495 (2003), par. 1.

¹⁷⁶ UN Security Council Resolution 1495 (2003), par. 2.

¹⁷⁷ A period of self-government and a final status referendum to be held within five years.

¹⁷⁸ The options envisaged would have been simply those of integration within Morocco’s territory or the continuation of autonomy.

¹⁷⁹ Morocco would have kept all public order, criminal procedure and security functions, while forbidding any secessionist activity. In general, all law enforcement powers were in the hands of the Moroccan government.

April 2004 sent a letter to Baker in which it officially rejected the Peace Plan: *“It is, therefore, out of the question for Morocco to engage in negotiations with anyone over its sovereignty and territorial integrity”*¹⁸⁰.

Consequently, on April 23, Kofi Annan and his Personal Envoy presented the UN Security Council with two options to follow: either to end MINURSO operations, recognizing UN inability in finding a sharable solution, or try to convince the disputants to accept and implement the Peace Plan¹⁸¹. Furthermore, in order to put pressure on the Security Council, both Baker and Annan affirmed that the plan was the *“the best political solution to the conflict over Western Sahara which provides for self-determination, as required by paragraph 1 of resolution 1429 (2002)”*¹⁸². By saying so, the UN Secretary-General and his Personal Envoy showed to have become increasingly disappointed by how the negotiations have been carried on and how the lack of firmness by the UN Security Council was detrimental in order to solve the issue.

Less than a week later, the Security Council adopted Resolution 1541 (2004), which, however, marked a sort of step back from Resolution 1495 (2003) since, even though it reiterated the Council’s support for the Peace Plan¹⁸³, it also reaffirmed the Council *“strong support for the efforts of the Secretary-General and his Personal Envoy in order to achieve a mutually acceptable political solution to the dispute over Western Sahara”*¹⁸⁴. Thus, there was clearly a sort of contradiction between the two paragraphs of the same resolution. In addition, the international context have changed a lot between 2003 and 2004: the new Spanish government¹⁸⁵, led by the socialists of José Zapatero, was in favor of restoring Spain’s relations with Morocco and the United States have changed their attitude towards Morocco since it was a useful ally in the “war on terror”. Consequently, only Algeria, a nonpermanent member of the Security Council, lobbied in favor of the Polisario Front and the support for the Peace Plan.

Disappointed by the new resolution, the UN Secretary-General Personal Envoy James Baker resigned on June 1, 2004. He believed that, from 1997 to 2004, he had done everything possible in

¹⁸⁰ UN doc. S/2004/325, Annex I, Report of the Secretary-General on the situation concerning Western Sahara.

¹⁸¹ UN doc. S/2004/325, Report of the Secretary-General on the situation concerning Western Sahara, par. 37: *“Given his history and these facts, in my view and in the view of my Personal Envoy, this realistically leaves only two options for the Security Council to consider. Option one would be to terminate MINURSO and return the issue of Western Sahara to the General Assembly, thereby recognizing and acknowledging that, after the passage of more than 13 years and the expenditure of more than \$600 million, the United Nations was not going to solve the problem of Western Sahara without requiring that one or both of the parties do something that they would not voluntarily agree to do. Option two would be to try once again to get the parties to work towards acceptance and implementation of the Peace Plan”*.

¹⁸² UN doc. S/2004/325, Report of the Secretary-General on the situation concerning Western Sahara, par. 38.

¹⁸³ UN Security Council Resolution 1541 (2004), par. 1.

¹⁸⁴ UN Security Council Resolution 1541 (2004), par. 2.

¹⁸⁵ At that time, and Spain was a non-permanent member of the UN Security Council.

order to solve the dispute over the territory of Western Sahara. In the last months of his mandate he was convinced that more pressure should have been put over the Moroccan government. When he resigned, Morocco was satisfied and believed it was a success of Moroccan diplomacy¹⁸⁶, instead the Polisario Front saw his resignation as a negative sign since he was a credible and respected mediator who had given hopes for Western Sahara independence.

OVERALL ASSESSMENT

After all, the seven years mandate of James A. Baker as the UN Secretary-General Personal Envoy for Western Sahara can be depicted as an attempted mediation between two parties, Morocco and the Polisario Front, that have not completely understood (or have not voluntarily understood) what a mediation mean.

Indeed, one of Baker's main concerns has been the fact that, in his view, both disputants have not departed from the perspective of the "winner-takes-all". This misperception goes against any possible attempt of mediation aimed at finding a "win-win" solution.

In addition, the ambivalent behavior pursued by a (divided) Security Council, unwilling to impose an undesired solution to either party, generated even more distortive effects. Regarding this point, it is also worth recalling the fact that, when Baker took office in May 1997 and throughout the 1990s, the United Nations was undergoing harsh critics by the international community regarding its role in certain scenarios¹⁸⁷; therefore, the UN Security Council tried to adopt a more cautious attitude, pushing hard for gaining the parties consensus before engaging in any concrete action. As many conflict resolution experts affirmed: "*intractable conflicts are no place for mediation initiatives undertaken as a substitute for clear policy or designed to conceal inaction or disarray in the ranks*"¹⁸⁸.

Examining the role of Baker as a mediator, it can be seen that his mediating style has been more a formulative one than a facilitative one. This has been particularly evident when he write down by himself the Framework Agreement and, three years later, the Peace Plan. In both cases he seized the moment and made a proposal to the parties.

¹⁸⁶ Anna Theofilopoulou, *The United Nations and Western Sahara: A Never-ending Affair*, United States Institute of Peace, 2006.

¹⁸⁷ Think about the genocide in Rwanda, the bombing of Srebrenica or the civil war in Somalia.

¹⁸⁸ Stephen Zunes, Jacob Mundy, *Western Sahara: War, Nationalism, and Conflict Irresolution*, Syracuse University Press, 2010, pag. 237.

However, in the first months of his period as the UN Secretary-General Personal Envoy he acted as a facilitator, mainly with regards to the first meetings in London and Lisbon, as well as the Houston meeting in which the parties reached an accord over the Houston Agreements. In this last occasion, Baker also contributed by setting the venue (his institute) for the talks.

Nonetheless, he proved to be a formulative mediator since the idea of a political solution, the so-called “third option”, came out by the end of the century. It is also true that, when he was appointed he was asked to make an evaluation of the UN efforts done so far and to explore if there was space for different solutions other than the implementation of the UN Settlement Plan.

Evidences of this formulative mediation style can be seen also in Baker’s attempt to help parties saving their face during the discussions about a possible political solution in September 2000 in Berlin. In that meeting he assured that their respective positions would not have been impaired since the rule of “Nothing is agreed until everything is agreed” was in place.

Then, regarding the two documents drafted by Baker, the Framework Agreement and the Peace Plan, they can be surely considered proofs of his formulative style of mediation. However, there is one main difference between them: the former was a draft that needed the parties approval to be adopted and implemented, while the latter, according to Baker, did not necessarily need such consensus, but should be imposed by the UN Security Council. This different attitude can clearly be ascribed to Baker’s growing disappointment with the parties¹⁸⁹ and with the Council.

In conclusion, James Baker’s period as the UN Secretary-General Personal Envoy for Western Sahara marked an important era of the dispute over Western Sahara. An era in which a credible and authoritative mediator tried in different ways and with different strategies to put an end to a never-ending quarrel between Morocco and the Polisario Front. His efforts produced two significant proposals (drafted as a real formulator) that unfortunately have not been used as basis for further negotiations in the following years.

After all, Baker’s efforts had failed because of external variables (for instance the lack of concrete support by the UN Security Council) and mainly because the parties were not enough motivated to put an end to the conflict. However, using Ho Won Jeong’s assessing technique, Baker’s failure was not a total flop; indeed, the American mediator was able, especially in the end of the Nineties, at building a sort of new spirit between the parties who, in turn, negotiated in a positive climate. However, the situation soon deteriorated thanks to several external variables cited above.

¹⁸⁹ Especially Morocco.

After James Baker's resignation from his role, the UN Secretary-General Kofi Annan vested his Special Representative for Western Sahara, Alvaro De Soto, to replace Baker in further negotiations with the parties. Eventually, one year later, on 1 August 2005 a new UN Secretary-General Personal Envoy for Western Sahara was appointed: the Dutch Peter van Walsum. The next chapter of this thesis will analyze his work and his mediation style with regards to the Western Sahara scenario.

CHAPTER 4: PETER VAN WALSUM (2005-2008)

THE BEGINNING OF A NEW MEDIATION STYLE

As said before, when Baker resigned, Alvaro De Soto, the Peruvian head of MINURSO and UN Secretary-General Special Representative, was appointed acting Personal Envoy for Western Sahara. Kofi Annan wanted to evaluate as best as he could the possible candidates for James Baker's legacy.

After one year of intense analysis, Anna formally appointed, on 25 July 2005, Peter van Walsum as the new UN Secretary-General Personal Envoy for Western Sahara. Despite not having the same pedigree as his predecessor, van Walsum was a distinguished Dutch diplomat who have worked also in the North-Atlantic Treaty Organization and in the Netherlands' Permanent Mission at the European Commission. Within the UN framework, he was appointed representative for the Netherlands in the UN Security Council from 1999 to 2000 and Chairman of the so-called 661 Committee¹⁹⁰.

In the following months, van Walsum prepared the ground for his mediation between a reticent Polisario Front, eager to adopt and implement the Peace Plan, and Morocco, whose position was still of a refusal of the plan since it contemplated the possibility of a Saharan independence. Van Walsum, then, inherited a really complex situation and a difficult political context since the "war on terror" was at its peak, therefore, the United States in the Security Council did not want to damage Morocco.

In addition, when van Walsum took office the "Independence Intifada" was in place. This uprising began earlier in May 2005 and lasted until the end of the year. It was characterized by a series of riots and demonstrations in the Moroccan part of Western Sahara, beginning from El Aaiun¹⁹¹. The Polisario Front and pro-independence organizations denounced Morocco's violent reaction¹⁹² to Saharawi demonstrations. All these events had important consequences on the climate between the two parties in the Western Sahara dispute.

¹⁹⁰ The 661 Committee, also named Iraq Sanctions Committee, was established during the Gulf War by UN Security Council Resolution 661 (1990) with the aim of determine which sanctions should have been set against Iraq after its attack against Kuwait.

¹⁹¹ On 21 May 2005 demonstrations broke out after the Moroccan police repressed a protest in favour of a young Sahrawi prisoner detained for drug trafficking.

¹⁹² The Moroccan government have been accused of having conducted summary trials and having tortured many protesters.

The new Personal Envoy of Kofi Annan visited¹⁹³ for the first time Western Sahara between October 11 and 17 in order to consult separately with the parties in two face-to-face meetings. In this occasion Morocco reaffirmed that it would contemplate only negotiations that regarded autonomy for Western Sahara and that it would have not considered independence as a ballot option in a possible referendum. On the other side, the Polisario Front reiterated its will to consider only negotiations with the Peace Plan or the UN Settlement Plan at the center of discussion.

A couple of weeks later, during the ceremony¹⁹⁴ for the thirtieth anniversary of the Green March, king Muhammad VI made an eloquent speech announcing that Morocco would have undergone an internal debate over Western Sahara possible autonomy. After this national dialogue would have been completed, Morocco would have presented its proposal for Western Sahara autonomy to the United Nations¹⁹⁵.

In the meantime, on 18 January 2006 the new Personal Envoy briefed the UN Security Council about his October visit to the region. According to van Walsum's view, the drafting of a new plan was implausible for two main reasons: Morocco firmness about non accepting a referendum that included independence and the UN Security Council's will to consider only a shared solution for this dispute¹⁹⁶. Despite this pessimistic view on drafting another plan, van Walsum gave the UN Security Council two options: *"indefinite prolongation of the current deadlock in anticipation of a different political reality; or direct negotiations between the parties"*¹⁹⁷.

Obviously, this was a predicted choice since no one in the Security Council would have ever contemplated a resort to violence¹⁹⁸. The organization, therefore, of direct talks was the route chosen by the Security Council. Van Walsum affirmed that these negotiations would start without preconditions¹⁹⁹ and their aim would have been *"to work out a compromise between international legality and political reality that would produce a just, lasting and mutually acceptable political solution, which would provide for the self-determination of the people of Western Sahara"*²⁰⁰.

¹⁹³ Together with the new Special Representative of the UN Secretary-General, the Italian Francesco Bastagli.

¹⁹⁴ Held on 6 November 2005

¹⁹⁵ The UN gave Morocco until April 2006 to produce its autonomy proposal. However, since the Moroccan government did not respected this deadline, the presentation of this proposal was postponed.

¹⁹⁶ UN doc. S/2006/249, Report of the Secretary-General on the situation concerning Western Sahara, par. 31.

¹⁹⁷ UN doc. S/2006/249, Report of the Secretary-General on the situation concerning Western Sahara, par. 32.

¹⁹⁸ UN doc. S/2006/249, Report of the Secretary-General on the situation concerning Western Sahara, par. 41: *"It is my view that a prolongation of the current deadlock might lead to a deterioration of the situation in Western Sahara, as signalled by continued demonstrations and allegations of human rights abuses"*.

¹⁹⁹ The Polisario Front would have never participated in a discussion on autonomy for Western Sahara under Morocco's sovereignty.

²⁰⁰ UN doc. S/2006/249, Report of the Secretary-General on the situation concerning Western Sahara, par. 34.

In that circumstance, it can be said that van Walsum showed a more facilitative approach of mediation, trying to put both parties in the best conditions to negotiate and reach an agreement. The reasons under this choice were various: first of all the Moroccan inflexibility, secondly, the Security Council unwillingness to impose a solution to either party (especially Morocco)²⁰¹, thirdly, Baker's failures with his two plans and finally the mutated context in Western Sahara, with all the demonstrations and riots that broke out during 2005.

Moreover, a facilitative approach was also dictated by the fact that van Walsum visited Western Sahara for the first time in October, therefore he needed to build up positive relations with the disputants by collecting information on their respective positions, by meeting them in person and by proceeding cautiously.

Anyway, three months after van Walsum's briefing to the UN Security Council, King Muhammad VI decided to reestablish the Royal Advisory Council for Saharan Affairs (CORCAS)²⁰² with the aim of helping the government with the issue of Western Sahara. This advisory council was also responsible for drafting the autonomy proposal to present to the United Nations as soon as possible.

Throughout the year 2006 the UN Secretary-general Personal Envoy paid several visits to Western Sahara and met with the parties in various occasions. Van Walsum met with Moroccan representatives both in New York and in Rabat and with Polisario's representatives in Tindouf, but also in The Hague and in New York. He had also the opportunity to meet with neighboring countries (Algeria and Mauritania) in The Big Apple, as well as three other countries interested in the dispute: Spain, France and the United States.

These meetings had different aims: first of all, van Walsum wanted to know the status of the autonomy plan proposed by Morocco. Secondly, he wanted to discover whether any other interested and/or neighboring country could have suggested *"a third option more likely to be acceptable to both parties"*²⁰³.

²⁰¹ UN doc. S/2006/249, Report of the Secretary-General on the situation concerning Western Sahara, par. 39: "[...]no country will state, or admit, that it favours a continuation of the impasse. But there seem to be two factors at play in most capitals: (a) Western Sahara is not high on the local political agenda; and (b) great store is set by continuing good relations with both Morocco and Algeria. These two factors combined constitute a powerful temptation to acquiesce to the continuation of the impasse[...]. As long as Western Sahara does not advance on their political agendas, many countries will find the status quo to be more tolerable than any of the possible solutions".

²⁰² This body is formed by 141 members who have either Moroccan or Sahrawi (tribal) origins. The latter are sheiks. These members are chosen by the Moroccan government, but they are representatives of all the political parties of the state.

²⁰³ UN doc. S/2006/817, Report of the Secretary-General on the situation concerning Western Sahara, par. 13.

During these meetings the UN Secretary-General Personal Envoy presented the parties with two extreme options: to maintain the stalemate or to engage in new negotiations. Consequently, while Morocco pushed for direct talks, the Polisario Front affirmed that it wanted to preserve the status quo. In addition, the Polisario's representatives stated that many young Sahrawi people wanted to take up arms against Morocco. However, according to van Walsum, this was only a well-calculated threat posed by Polisario, who actually wanted to get away from the impasse created in the previous two years, but, at the same time, wanted to put pressure both on Morocco and the United Nations.

Furthermore, since van Walsum's approach consisted in pushing for direct talks between the disputants, he reassured the parties about the fact that these discussion would have been held without preconditions. As affirmed by Kofi Annan in its October 2006 report: *"Such negotiations will not get off the ground unless the Security Council makes it absolutely clear that the exercise of self-determination is the only agreed aim of the negotiations; they cannot be about a proposal for Western Saharan autonomy under Moroccan sovereignty (although, again, such a proposal may be tabled), nor about a referendum with independence as an option (although this too may be tabled). The fact that the Security Council has acquiesced in Morocco's rejection of a referendum with independence as an option does not imply that it has rejected such a referendum itself"*²⁰⁴. Moreover, the outgoing UN Secretary-General recommended the Security Council to call upon the disputants to enter into such negotiations, but this recommendation remained unheeded²⁰⁵ since a few days later the Council did not mention it in its Resolution 1720 (2006).

THE PARTIES' PROPOSALS

After Kofi Annan's departure, on the first day of January 2007, Ban Ki-Moon became the new UN Secretary-General. Despite having taken office few months before, he soon became involved in the Western Sahara dispute since he met separately with the parties in February and March. In those meetings, Polisario reiterated its positions, while Morocco provide some details of its autonomy proposal. Meanwhile, also Algeria, Mauritania, Spain, the United States and France had the opportunity to meet the new UN Secretary-General to discuss the issue of Western Sahara. Moreover, also Ban Ki-Moon's Personal Envoy engaged in talks with the parties, reaffirming the need for direct discussions.

²⁰⁴ UN doc. S/2006/817, Report of the Secretary-General on the situation concerning Western Sahara, par. 19.

²⁰⁵ In this sense, van Walsum revealed to the UN Secretary General that his recommendation was not criticized or even rejected, but the UN Security Council had merely failed to pursue it.

On 10 April 2007, the Polisario Front presented to the UN Secretary-General its “*Proposal of the Frente Polisario for a mutually acceptable political solution that provides for the self-determination of the people of Western Sahara*”. The liberation movement stressed the fact that the whole dispute was an issue of decolonization between Morocco (the colonizer) and the Polisario Front and that the Madrid Agreements had not represented a transfer of sovereignty. Therefore, Western Sahara was still a Non-Self-Governing Territory²⁰⁶.

This fact meant, according to the Polisario Front, that the final objective should be that of offering the Sahrawi people the opportunity to hold their future in their hands through the organization of the well-known referendum on self-determination. The Polisario’s plan envisaged a referendum with the same ballot options foreseen by the two Baker Plans, namely: independence, integration into Morocco’s territory or the continuation of self-government. In addition, this proposal contained also some guarantees²⁰⁷ to the Moroccan people of Western Sahara in the hypothesis that the referendum would have been won by the independence supporters²⁰⁸.

The following day, April 11, 2007, the Moroccan government submitted its autonomy proposal, entitled “*Moroccan Initiative for Negotiating an Autonomy Statute for the Sahara Region*” to the UN Secretary-General and his Personal Envoy. According to this plan, the Sahrawi would simply govern locally under Moroccan sovereignty, with Rabat controlling exclusively foreign affairs and the defense sector. Moreover, Morocco warned the United Nations that if that proposal had not passed then Islamic terrorism would have spread around the two regions of Maghreb and Sahel.

²⁰⁶ *Proposal of the Frente Polisario for a mutually acceptable political solution that provides for the self-determination of the people of Western Sahara*, 10 April 2007, par. 2 - 4.

²⁰⁷ *Proposal of the Frente Polisario for a mutually acceptable political solution that provides for the self-determination of the people of Western Sahara*, 10 April 2007, par. 9: “The guarantees to be negotiated by the two parties would consist in: the mutual recognition of and respect for the sovereignty, independence and territorial integrity of the two countries in accordance with the principle of the intangibility of the borders inherited from the independence period; the granting of guarantees concerning the status and the rights and obligations of the Moroccan population in Western Sahara, including its participation in the political, economic and social life of the territory of Western Sahara. In this respect, the Saharawi State could grant the Saharawi nationality to any Moroccan citizen legally established in the territory that would apply for it; the agreement on equitable and mutually advantageous arrangements permitting the development and the joint exploitation of the existing natural resources or those that could be discovered during a determined period of time; the setting up of formulas of partnership and economic cooperation in different economic, commercial and financial sectors; the renunciation by the two parties, on a reciprocal basis, of any compensation for the material destructions that have taken place since the beginning of the conflict in Western Sahara; the conclusion of security arrangements with the Kingdom of Morocco as well as with the countries of the region that may be interested; the commitment of the Saharawi State to work closely with the Kingdom of Morocco as well as with the other countries of the region with a view to bringing to conclusion the integration process of the Maghreb; the readiness of the Saharawi State to participate with Morocco and the countries of the region in the maintenance of peace, stability and security of the whole region in the face of the different threats that could target it”.

²⁰⁸ *Proposal of the Frente Polisario for a mutually acceptable political solution that provides for the self-determination of the people of Western Sahara*, 10 April 2007, par. 8.

Nonetheless, the Polisario Front would have never accepted such plan. Indeed, Western Sahara would have remained solidly under Morocco's administration since the King and a Moroccan representative²⁰⁹ would have maintained the ultimate decision-making powers over almost every initiative of the local government. The King, in particular, would have invested the Head of the Government of the "Sahara Autonomous Region", which would have been elected by a regional parliament.

In addition, Morocco wanted to use this proposal as the basis for further consultations between it and the Polisario Front: "*The Moroccan initiative, which is made in an open spirit, aims to set the stage for dialogue and a negotiation process that would lead to a mutually acceptable political solution*"²¹⁰. The final outcome of this negotiations would have been the acceptance (or the refusal) of the autonomy statute through the holding of a referendum, whose voters would have been basically all the people of Western Sahara. As pointed out by Zunes and Mundy, these provisions about such a referendum and unspecified negotiations between the parties were very vague²¹¹ and would have never been accepted by the Polisario Front²¹².

Eventually, the new UN Secretary-General Ban Ki-Moon reiterated the same recommendation made by his predecessor, Kofi Annan, to the UN Security Council, namely the need to call upon the parties "*to enter into negotiations without preconditions, with a view to achieving a just, lasting and mutually acceptable political solution that will provide for the self-determination of the people of Western Sahara [...]*"²¹³.

Quite surprisingly, on 30 April 2007, the UN Security Council adopted Resolution 1754 (2007) by which it embraced Ban Ki-Moon's recommendation and consequently called upon Morocco and the Polisario Front to engage in such negotiations without preconditions with the aim of providing self-determination for the Western Sahara's population²¹⁴. In addition, the Security Council requested the Secretary-general to organize these discussions under his aegis and to produce a report about them before the end of June 2007²¹⁵. Moreover, with this resolution, the MINURSO mandate was once again renewed.

²⁰⁹ Moroccan Initiative for Negotiating an Autonomy Statute for the Sahara Region, 11 April 2007, par. 16: "*The powers of the State in the Sahara autonomous Region [...] shall be exercised by a Representative of the Government*".

²¹⁰ Moroccan Initiative for Negotiating an Autonomy Statute for the Sahara Region, 11 April 2007, par. 7.

²¹¹ Stephen Zunes, Jacob Mundy, *Western Sahara: War, Nationalism, and Conflict Irresolution*, Syracuse University Press, 2010, pag. 244.

²¹² Because the negotiations would have involved the autonomy statute and the referendum would have regarded merely the acceptance of such statute.

²¹³ UN doc. S/2007/202, Report of the Secretary-General on the situation concerning Western Sahara, par. 47.

²¹⁴ UN Security Council Resolution 1754 (2007), par. 2.

²¹⁵ UN Security Council Resolution 1754 (2007), par. 3 – 4.

This act adopted by the UN Security Council represented a true victory for the UN Secretary-General Personal Envoy Peter van Walsum who, almost since the beginning of his mandate, advocated for the launch of such kind of direct negotiations between Morocco and the Polisario Front. Van Walsum, knowing the really complex situation in which the dispute stagnated, presented to the Security Council the option of direct talks with no preconditions already in early 2006.

Furthermore, conscious of having no stick in his hands and with almost no carrots to offer to the parties, he managed to convince the parties that direct negotiations would have been fundamental in order to avoid the resumption of violence. Actually, the parties were both not completely convinced about the usefulness of these talks: on one side, Morocco would have never accepted to talk about independence, while on the other side the Polisario Front would have refused to talk about autonomy. This impasse was present also during other negotiations (for instance in Houston, 1997), but Baker always managed to unblock the situation with the well-known formula that “nothing is agreed until everything is agreed”, which helped the parties not to impair their respective positions.

In particular, the liberation movement was conscious of two things: first, that Morocco held several allies in the Security Council willing to end this long costly dispute and second, that if Polisario had shown any minimal openness to talk about autonomy, this would have meant a point of no return²¹⁶.

By the way, having Morocco’s autonomy proposal on the table and having reassured Polisario that the talks would have ensured self-determination for Western Sahara’s people, van Walsum (in accordance with Ban Ki-Moon) convened the parties at the Greentree Estate in Manhasset (near New York) on June 18 and 19. This was the first time since the beginning of the century that Morocco and Polisario met in face-to-face talks.

THE MANHASSET NEGOTIATIONS

The agenda of these negotiations was set by Peter van Walsum who, like James Baker had done before, invited also Algeria and Mauritania to take part into such talks as observers. Nonetheless, Morocco and the Polisario Front preferred to meet without the presence of the

²¹⁶ Stephen Zunes, Jacob Mundy, *Western Sahara: War, Nationalism, and Conflict Irresolution*, Syracuse University Press, 2010, pag. 246 - 247.

delegations of Algeria and Mauritania. Consequently the representatives of the two observers were present only at the opening and closing sessions of the talks²¹⁷.

The delegations were composed as follows. Morocco's representatives were, among others: the Interior Minister Chakib Benmoussa (lead negotiator), the Deputy Foreign Minister Taieb Fassi Fihri and the Chairman of CORCAS Khalihenna Ould Errachid²¹⁸. Polisario's delegation were composed by the President of the Sahrawi National Council Mahfoud Ali Beiba, the Polisario representative at the UN Ahmed Boukhari and the incumbent President of the Sahrawi Arab Democratic Republic Brahim Ghali²¹⁹. Algeria was represented by the former President of the UN Security Council Abdallah Baali and by the former Minister of Foreign Affairs Youcef Youssi²²⁰. Finally, Mauritania's representatives were: former Prime Minister Sidi Mohamed Ould Boubacar²²¹ and Mauritania's Ambassador to the UN Abderrahim Ould Hadrami.

The delegations composition resulted to be really important at the end of the meeting. Indeed, if the Polisario's representatives were basically the same since the 1997 talks in Houston, the Moroccan team was really different from those of the previous negotiations. In particular, King Muhammad VI decided to dispatch the Chairman of CORCAS (Khalihenna Ould Errachid), who probably was the strongest supporter of the Moroccan positions since CORCAS had basically written Morocco's autonomy proposal. This move represented a sort of provocation against the Polisario Front. Moreover, by sending the Minister of Interior (Chakib Benmoussa), the Moroccan government demonstrated to consider the issue at stake as a matter of internal affairs, not a foreign-policy issue. All of this marked a significant difference with the past and contributed to increase the distance between the two parties' respective positions.

Anyway, during the negotiations, the UN Secretary-General Personal Envoy demonstrated to be a real facilitator as can be seen also in Ban Ki-Moon's report of June 29, 2007: *"In facilitating the negotiations, my Personal Envoy asked for an open and frank but nonetheless respectful discussion. During the discussions, the parties reiterated their commitment to the process and appeared determined not to be the cause of a breakdown of the negotiations"*²²². Probably, considering the mutated context, van Walsum hoped to build a sort of "Manhasset spirit" between the parties similar to the one generated by the Houston Agreements.

²¹⁷ However, Algeria and Mauritania had been consulted separately by both parties during the whole meeting.

²¹⁸ He had been also the founder of the PUNS and its Secretary from 1974 to 1975.

²¹⁹ At the time of the Manhasset negotiations he was the Sahrawi Ambassador to Spain.

²²⁰ At the time of the Manhasset negotiations he was Algeria's Permanent Representative to the United Nations.

²²¹ At the time of the Manhasset negotiations he was Mauritania's Ambassador to Spain.

²²² UN doc. S/2007/385, Report of the Secretary-General on the status and progress of the negotiations on Western Sahara, par. 7.

In this sense, as already stated in Chapter 2 of this thesis, facilitation can also mean creating a climate of confidence where the parties are free to express their positions and also free to quarrel but in a very positive and constructive context. In the case of the Manhasset negotiations, it can be even argued that van Walsum adopted a transformative mediation style: a technique aimed merely at transforming (positively) the relationship between the disputants, not at reaching some sort of agreement²²³.

However, although having contributed to the creation of a positive mood between the disputants, the meeting in Manhasset was unsuccessful since it did not provide any positive step towards the resolution of the Western Sahara dispute. Both Morocco and the Polisario Front merely agreed to the communiqué drafted by van Walsum²²⁴ by which they decided to engage in further negotiations to be held in the second week of August 2007²²⁵ still in the same venue decided by the United Nations.

Apparently this report had been modified by the UN Secretary-General himself because of fears that it might negatively influence the further round of talks. In the original version, Ban Ki-Moon made several recommendations to the Council to call upon all member states to urge “*both parties to make every effort to maintain the momentum and to impress upon them that a final resolution of the conflict will require flexibility and sacrifice from both of them*”²²⁶. Eventually, the report was redrafted without such parts.

As agreed upon during the first round of negotiations in Manhasset, the parties met again on 10 and 11 August 2007. At that moment, the UN Secretary-General Personal Envoy opened the discussion with the proposal of expanding the (already present) confidence-building measures²²⁷ between the disputants. However, both the Polisario Front and Morocco refused to talk about that specific issue due to different reasons. In particular, Morocco thought that the UNHCR was the appropriate forum in which to discuss such issue, while Polisario affirmed that the confidence-building measures current at that time were sufficient. Finally, as already done at the end of the first

²²³ This style of mediation was firstly introduced by Robert Bush and Joseph Folger in their book: “*The Promise of Mediation: The Transformative Approach to Conflict*”.

²²⁴ The drafting of this communiqué shall not be confused with the activity of the typical formulative mediator who drafts in person a possible solution to the dispute. This communiqué, as already the word says, was just a message, not even an attempted solution.

²²⁵ UN doc. S/2007/385, *Communiqué of the Personal Envoy of the Secretary-General for Western Sahara, agreed with the parties meeting at the Greentree Estate, Manhasset, New York, 19 June 2007*, Annex, Report of the Secretary-General on the status and progress of the negotiations on Western Sahara.

²²⁶ UN doc. S/2007/385, Report of the Secretary-General on the status and progress of the negotiations on Western Sahara, Original Version.

²²⁷ For instance, an increase in the frequency of contacts between Sahrawi refugees in the area of Tindouf and their relatives in Western Sahara.

round of talks in Manhasset, the parties agreed to van Walsum's communiqué and committed to another round of negotiation²²⁸.

This second round of talks constituted another unsuccessful meeting since the disputants kept their respective rigid positions and engage only in technical (and non-controversial) issues²²⁹ added by van Walsum to the agenda. This, according to Ban Ki-Moon, was mainly due to a misinterpretation of the UN Security Council Resolution 1754 (2007) and precluded a positive outcome for these talks: “[...]Thus, formally, everything was in order, but as these fundamental positions were mutually exclusive, they prevented each party from seriously discussing the other party's proposal. As a result, the parties did, indeed, express their views and even interacted with one another, but they mainly did so by rejecting the views of the other party, and there was hardly any exchange that could in earnest be characterized as negotiations”²³⁰.

As a consequence, in order to solve the impasse of a static negotiation, van Walsum decided to use the principle of “nothing is agreed until everything is agreed”, believing that the parties could have discussed proposals that otherwise they would have not. He also affirmed that the parties should demonstrate their compliance with UN Security Council Resolution 1754 (2007), which have called upon the parties to begin negotiations by putting both proposals (autonomy or the referendum for independence) on the table and discussing them concretely²³¹.

Consequently, for his part, the UN Secretary-General Ban Ki-Moon reiterated his, many times mentioned, request to the UN Security Council to “*call upon the parties, Morocco and the Frente Polisario, to enter into genuine negotiations, thus ensuring a more substantial implementation of its resolution 1754 (2007)*”²³². Anyhow, he welcomed the advent of the first two round of negotiations in Manhasset and set the date for the third round of talks on 8 and 9 January 2008.

Well before that such negotiations took place, on 31 October 2007 the UN Security Council adopted Resolution 1783 (2007) by which it endorsed the recommendation put forward by Ban Ki-Moon and, among other provisions, called upon the disputants “*to continue to show political will and work in an atmosphere propitious for dialogue in order to engage in substantive negotiations,*

²²⁸ UN doc. S/2007/619, *Communiqué of the Personal Envoy of the Secretary-General for Western Sahara (in agreement with the parties)*, Annex I, Report of the Secretary-General on the situation concerning Western Sahara.

²²⁹ The already mentioned confidence-building measures, but also the issue of natural resources and that of local administration.

²³⁰ UN doc. S/2007/619, Report of the Secretary-General on the situation concerning Western Sahara, par. 10.

²³¹ UN doc. S/2007/619, Report of the Secretary-General on the situation concerning Western Sahara, par. 17.

²³² UN doc. S/2007/619, Report of the Secretary-General on the situation concerning Western Sahara, par. 62.

thus ensuring implementation of resolution 1754 and the success of negotiations”²³³ and “*to continue negotiations under the auspices of the Secretary-General without preconditions and in good faith [...]*”²³⁴.

The third round of talks was set up by Ban Ki-Moon and Peter van Walsum on 8 and 9 January 2008 always in Manhasset. Despite the call to show political will and to engage in substantive negotiations, the parties seemed not to be interested very much in doing so. Van Walsum tried as best as he could to safeguard the success of the discussion: he managed to keep the parties at the table and he set the agenda including several technical aspects²³⁵ to be discussed, but the parties never engage in negotiations *stricto sensu*²³⁶. In other words, even though Morocco and the Polisario Front interacted with each other, they remained static on their respective positions without any concrete willingness to analyze in depth each other’s proposal.

Eventually, the parties agreed to the final communiqué drafted by the UN Secretary-General Personal Envoy. In that document, van Walsum clearly expressed his disappointment by affirming that: “[...] *the parties continued to express strong differences on the fundamental questions at stake*”²³⁷. Nevertheless, since they committed themselves to implement the UN Security Council resolutions 1754 (2007) and 1783 (2007), they “*agreed on the need to move the process into a more intensive and substantive phase of negotiations*”²³⁸. Therefore, a three days round of talks was organized in Manhasset from 16 to 18 March 2008.

Prior to this meeting, van Walsum visited the region in the first two weeks of February 2008 where he met with representatives of both parties as well as representatives of the neighboring countries (Algeria and Mauritania). The UN Secretary-General Personal Envoy tried to convince the actors involved that a more substantive and inclusive negotiation was necessary in order to precisely identify a possible solution for the long-lasting dispute over Western Sahara.

Consequently, the fourth round of talks in Manhasset began with van Walsum’s hope to finally move away from each party’s position towards a common ground of negotiation. Soon the

²³³ UN Security Council Resolution 1783 (2007), par. 2.

²³⁴ UN Security Council Resolution 1783 (2007), par. 3.

²³⁵ Among them: confidence-building measures and local administrations (organs and competences).

²³⁶ UN doc. S/2008/45, Report of the Secretary-General on the status and progress of the negotiations on Western Sahara, par. 4: “[...] *although the parties dynamically interacted with each other, there was hardly any exchange that could be characterized as negotiations*”.

²³⁷ UN doc. S/2008/45, *Communiqué of the Personal Envoy of the Secretary-General for Western Sahara (in agreement with the parties)*, Greentree Estate, 9 January 2008, Annex, Report of the Secretary-General on the status and progress of the negotiations on Western Sahara

²³⁸ UN doc. S/2008/45, *Communiqué of the Personal Envoy of the Secretary-General for Western Sahara (in agreement with the parties)*, Greentree Estate, 9 January 2008, Annex, Report of the Secretary-General on the status and progress of the negotiations on Western Sahara

discussion focused on the implementation of the two UN Security Council resolutions mentioned previously. Then, Morocco and the Polisario Front exchanged their views on how they interpreted the principle of self-determination.

However, van Walsum's hope was disregarded since once again no concrete steps were made towards a long-lasting solution for the Western Sahara dispute; they only agreed to implement confidence-building measures²³⁹ and to meet again in Manhasset on an undefined date. Ban Ki-Moon, in his April 14 report reiterated his recommendation to the UN Security Council to call upon the parties²⁴⁰.

After few weeks, in the end of April 2008 the UN Secretary-General Personal Envoy briefed the UN Security Council on the progresses achieved during the Manhasset negotiations. Tired of four inconclusive round of talks, van Walsum openly admitted that, in his view, Western Sahara independence was basically unrealistic and that the Security Council should have confessed it.

Anyway, these arguments were not embraced by the UN Security Council in its Resolution 1813 (2008): quite surprisingly there was no mention of the Personal Envoy's briefing in such resolution. Instead, the Council pushed for further negotiations between the parties and renewed MINURSO mandate for one year²⁴¹.

Even though Resolution 1813 (2008) did not mention van Walsum's statements regarding the impossibility of an independent Western Sahara, Moroccan press leaked them and made them public. As a consequence, the Polisario Front released a communiqué declaring no more confidence in the work of the UN Secretary-General Personal Envoy²⁴². However, Polisario was not the only actor involved in the dispute to be upset by van Walsum's assessment; indeed, also the UN Secretariat was really bothered because those statements clashed with Ban Ki-Moon report of two weeks earlier.

To make things worse, van Walsum released an interview to the Dutch newspaper *NRC Handelsblad* in which he reiterated the concepts expressed during his briefing to the UN Security

²³⁹ It was relevant in this sense the decision to let family visits by land and to dismantle a portion of minefields close to the Berm.

²⁴⁰ UN doc. S/2008/251, Report of the Secretary-General on the situation concerning Western Sahara, par.67: "*On the basis of the fourth rounds of talks held under the auspices of the United Nations and taking into account the assessment of my Personal Envoy, I recommend that the Security Council reiterate its call upon the parties, Morocco and the Frente Polisario, to enter into a more intensive and substantive phase of negotiations. It is also my recommendation that, in doing so, the Council call upon the parties to negotiate without any precondition*".

²⁴¹ UN Security Council Resolution 1813 (2008).

²⁴² Stephen Zunes, Jacob Mundy, *Western Sahara: War, Nationalism, and Conflict Irresolution*, Syracuse University Press, 2010, pag. 247.

Council adding that if the United States and France had not sustained independence, it would have never been achieved. During this interview, he wanted to get rid of a situation that was bothering him: *“I got the feeling that I had been put down here to keep the matter going on indefinitely. From all sides I got to hear: Go on, keep going! Things are heading in the right direction. I got an awful lot of compliments, especially from Algeria that supports Polisario. It was marvelous how everything proceeded. Then I thought: no sorry, something does smell very wrong here. [...] If I continue to sit here as a good boy and do what is expected of me, then I will not mediate four rounds, but eight, twelve or sixteen rounds. There is no solution, because the two main points of view of the parties are irreconcilable on the matter of a referendum concerning independence. [...] Nobody believes, as it happens, in a solution. Morocco over-estimates its own position and Polisario and Algeria have no other aim but to keep the negotiation process going until the Security Council becomes so desperate that it agrees with a referendum on independence”*²⁴³.

With the Polisario already unwilling to take part into negotiations under the auspices of Peter van Walsum and with the UN Secretary-General that refused to talk about the Western Sahara issue in public, the fifth round of Manhasset negotiations remained only just an hypothesis.

As time went by, the UN Secretary-General Personal Envoy was totally alone, but released another harsh interview, that time to the Spanish newspaper *El País*²⁴⁴, saying basically the same concepts previously mentioned. Already irritated by van Walsum’s behavior, the UN Secretariat decided not to renew his contract which, consequently, expired at the end of August 2008.

OVERALL ASSESSMENT

After all, the mediation efforts made by Peter van Walsum during his three years mandate as the UN Secretary-General Personal Envoy did not put an end to the long-lasting dispute over the territory of Western Sahara. Between 2005 and 2008, van Walsum adopted a facilitative approach trying to build confidence between Morocco and the Polisario Front.

However, reducing his work to a mere attempt at making the parties talk with each other is unfair. Nevertheless, it is equally unjust to affirm that he adopted the same formulative mediation style followed by the previous UN Secretary-General Personal Envoy, James Baker.

²⁴³ Steven Adolf, *Interview with Peter van Walsum*, NRC Handelsblad, 24 May 2008.

²⁴⁴ Ignacio Cembrero, *Interview with Peter van Walsum*, El País, 08 August 2008.

By contrast, it can be said without prejudice that van Walsum was somehow “forced” to use such facilitative strategy due to four relevant reasons: the growing Moroccan inflexibility, the Security Council’s unwillingness to impose a solution to either party, Baker’s failures and finally the mutated context in Western Sahara.

First of all, Morocco’s inflexibility over the Saharan dispute was growing stronger and stronger due to changes in the internal composition of the government. From this point of view, the reestablishment of the CORCAS is a proof of a mutated policy toward Western Sahara, a policy of harsh intransigence that invested also Moroccan relations with the Polisario Front.

Curiously, this new attitude lasted even when the demographic context in Western Sahara changed a lot. Indeed, among the population of Western Sahara, the number of individuals with Moroccan origins have grown very much since 2006, doubling the number of individuals with Sahrawi origins²⁴⁵. This means that even if a referendum (with independence, autonomy and integration as ballot options) had occurred, surely it would have been won by the Moroccans²⁴⁶.

The second reason was the UN Security Council’s unwillingness to impose a solution to either party. This obviously did not mean that the Council was incapable of doing so, but that very influential components within the Council lobbied for the maintenance of the status quo. Actually, this was a problem faced also by James Baker during his mandate as the UN Secretary General Personal Envoy for Western Sahara.

However, the international context when Baker took his job was really different for the one faced by van Walsum. Indeed, from 1997 to 2004, the UN was facing harsh critics for its operations in the Nineties²⁴⁷, while the “War on Terror” was at its starting point. Conversely, when van Walsum took office, the fight against international terrorism and the war in Afghanistan and Iraq reached their peaks. With regards to the dispute over Western Sahara, among the UN Security Council a “Group of Friends”²⁴⁸ of Morocco was formed, therefore the Council could not impose any solution to the Moroccan government.

The third reason was the failures of the Baker’s proposals. Van Walsum, thus, decided to adopt a completely new strategy, a more cautious mediation style, limiting himself at the role of the pure facilitator. After all, this was also the route chosen by the UN Security Council. Therefore,

²⁴⁵ Loveday Morris, *Women on frontline in struggle for Western Sahara*, The Guardian, 16 July 2013.

²⁴⁶ Either choosing autonomy or integration with the Home Country.

²⁴⁷ Thus, the Security Council was really cautious in its decisions.

²⁴⁸ The “Group of Friends” is a formula used by scholars to identify a group of countries within the UN Security Council that are allied with Morocco. Among them: the United States, France, but also Russia and the United Kingdom, as well as other non-permanent members.

since Baker failed by trying to impose an “external” solution to the parties, pursuing this strategy would have achieved no positive results.

Finally, changes in Western Sahara context played a final key role in the adoption of a facilitative mediation strategy by Peter van Walsum. Indeed, the breaking out of riots and protests between May and October 2005 and the huge amount of charges against the Moroccan government contributed to the deterioration of the relations between Morocco and the Polisario Front. The two parties, instead of collaborating with each other, became more and more intransigent in their positions. In order to overcome this lack of confidence, during the Manhasset negotiations, Peter van Walsum pushed precisely for the expansion of confidence-building measures.

Anyway, as the UN Secretary-General Personal Envoy, van Walsum worked hardly adopting a facilitative mediation style in order to overcome a situation that, due to different reasons, became more and more serious. In this sense, Peter van Walsum was “forced” to use such style, albeit some footprints of a transformative mediation can be identified. Even though his efforts reached the goal of putting again the parties at the table of negotiation, he failed when he acknowledged that those efforts did not serve at finding a durable, sharable and fair solution for the dispute over Western Sahara.

Then, he understood that the parties did not have a strong motivation about solving the issue. After all, as Ho Won Jeong affirmed: *“In general, successful mediation is more likely to come from a strong desire for settlement (in combination with relative power parity, impasse in fighting, and external pressure to settle) as well as the absence of nonnegotiable value or principle issues and the existence of organized parties”*²⁴⁹.

Van Walsum efforts, however, did not serve to improve the parties relations, which were extremely damaged by the tensions erupted in Western Sahara between May and October 2005. In this sense, therefore, any attempt to adopt a transformative mediation strategy revealed itself to have been completely useless or, at least, extremely ineffective²⁵⁰. The same goes for the most used mediation style exploited by van Walsum: the facilitative one.

In conclusion, Peter van Walsum did not leave any kind of legacy to his successor Christopher Ross, except for the parties’ (only affirmed)²⁵¹ will to pursue the talks. When he realized the impediments to his efforts and the parties’ misleading behavior, he decided to denounce

²⁴⁹ Ho Won Jeong, *Conflict Management and Resolution: An Introduction*, Routledge, 2009, pag. 178.

²⁵⁰ He managed to bring Morocco and the Polisario Front to the same table of negotiation for the first time since the end of the twentieth century.

²⁵¹ In the communiqué after the fourth round of talks in Manhasset.

the Security Council unwillingness to impose any solution to the disputants and to release the first interviews since he was appointed. Those moves, however, marked the end of his mandate.

CHAPTER 5: CHRISTOPHER ROSS (2009-2017)

THE APPOINTMENT AND THE INFORMAL MEETINGS

From August 2009 until the end of the year, the situation in Western Sahara remained calm²⁵², with no clashes between the parties. It goes without saying that, in order to find the best substitute for Peter van Walsum as the UN Secretary-General Personal Envoy, Ban Ki-Moon undertook a visit to the region between September and November.

During his time there, he entertained several separated discussions with both parties, meeting in September with the Moroccan Minister for Foreign Affairs, Taïb Fassi Fihri, and in November with Mohamed Abdelaziz, the Secretary-General of the Polisario Front. Furthermore, Ban Ki-Moon took advantage of the meetings and reaffirmed to both Morocco and the Polisario Front the need for further negotiations keeping the Manhasset rounds as the basis²⁵³.

The reference to the Manhasset negotiations is really important because the new UN Secretary-General Personal Envoy for Western Sahara would have been a person that took part to those negotiations as an observer. Indeed, on January 14, Ban Ki-Moon formally announced the appointment of Mr. Christopher W. S. Ross as his new Personal Envoy for Western Sahara²⁵⁴.

Ross is a notable American diplomat who served in the U.S. State Department for many years²⁵⁵. He is an expert of the MENA region who can speak Arabic really fluently. During his long career, he was also appointed as U.S. Ambassador to Algeria (1988-1991) and to Syria (1991-1998), while in 2004, after his resignation, he served in the U.S. Embassy in Baghdad as a Senior Adviser. In addition, during the Manhasset rounds, he represented the United States as an observer of the discussions. Both Morocco and the Polisario Front welcomed the appointment of Ross as the new UN Secretary-General Personal Envoy for Western Sahara.

Soon, he undertook his first official visit²⁵⁶ to the region in order to discuss with each party separately. He did so in order to explore new ways to reach a more substantive and in-depth negotiation between Morocco and the Polisario Front. Moreover, he wanted also to detect if any of

²⁵² The only notable event was the coup d'état that took place in Mauritania against President Sidi Mohamed Ould Cheikh Abdallahi, causing his overthrowing.

²⁵³ UN doc. S/2009/200, Report of the Secretary-General on the situation concerning Western Sahara, par. 8.

²⁵⁴ He was appointed one week earlier, on January 7, 2009.

²⁵⁵ From 1979 to 1999 (and after).

²⁵⁶ From 17 to 28 February 2009 he visited Western Sahara.

the two disputants was willing to change its own position in order to move further to the resolution of a dispute that was open since 1991. As a consequence, he obtained positive responses from both parties.

Between the disputants, the Polisario Front was surely in the most difficult diplomatic position since his creation. Indeed, the prolonged stalemate in the dispute caused the disappointment and the irritation of the UN Security Council, among which there were more Morocco's allies than Polisario's. In addition, the liberation movement have witnessed two trends in international relations: the deterioration of its links with United States and the relaxation of Morocco-Algeria ties.

The former trend was due to the fact that the Bush administration decided to line up more and more with the Moroccan government and released several comments about the dispute over Western Sahara; for instance, on 23 July 2008 President Bush sent a letter to King Muhammad VI saying that "An independent Sahrawi state is not a realistic option. In our view some form of autonomy under Moroccan sovereignty is the only realistic way forward to resolve this longstanding conflict"²⁵⁷. The latter trend regarded a general improvement of the diplomatic relations between Algeria and Morocco: in general their ties got better and better from 1988 onwards, but since the arrival of Abdelaziz Bouteflika this amelioration became more vigorous.

Anyway, after having consulted with the parties, Ross decided that further direct negotiations between the parties would have been necessary. However, before convening for an hypothetical fifth round of talks, a preparatory (informal) summit was needed in order to guarantee a positive outcome for the future round of negotiations. Using the fourth round communiqué as a leverage, he proposed such introductory meetings to the parties which then agreed with Ross.

Following this line of reasoning, the UN Secretary-General reiterated his recommendation to the UN Security Council to repeat its "*call upon the parties, Morocco and the Frente Polisario, to negotiate in good faith, without any preconditions, and to show political will to enter into substantive discussions and ensure the success of the negotiations*"²⁵⁸. As a consequence, on April 30, the Security Council responded positively to such recommendation in its Resolution 1871 (2009), calling again upon the parties to engage in such type of negotiations. The resolution also

²⁵⁷ Stephen Zunes, Jacob Mundy, *Western Sahara: War, Nationalism, and Conflict Irresolution*, Syracuse University Press, 2010, pag. 247.

²⁵⁸ UN doc. S/2009/200, Report of the Secretary-General on the situation concerning Western Sahara, par. 62.

welcomed “the parties’ agreement with the Personal Envoy’s suggestion to hold small, informal talks in preparation for a fifth round of negotiations [...]”²⁵⁹.

Since the adoption of Resolution 1871 (2009), the UN Secretary-General Personal Envoy began consultations with the parties in New York in order to set the venue, the date and the agenda of the introductory meeting aimed at prepare the ground for a new round of negotiation to be held on the wake of the previous four rounds in Manhasset. Along with these consultations, Christopher Ross decided to visit once again the territory of Western Sahara (and its neighboring states of Algeria and Mauritania)²⁶⁰ in June 2009.

The venue for the informal meeting was found in Austria. There, the parties, together with Ross and observers from other countries, met in Dürnstein on August 9 and 10. A new spirit has been created in that rendezvous since the parties engaged “in a spirit of extensive give and take”²⁶¹, resuming a constructive dialogue that was absent in the last rounds of the Manhasset negotiations.

Nonetheless, when the disputants touched the humanitarian part of the discussion, they blamed each other for human rights violations and this ignited the talks. In order not to ruin the positive mood of the meeting, the UN Secretary-General Personal Envoy offered himself to be the “messenger” between the parties with regards to accusations of human rights violations²⁶². However the parties pursued in such behavior of reciprocal allegations.

In the last day of the meeting, August 10, Morocco and the Polisario Front briefly touched the central issue of self-determination. Despite not having concluded anything in concrete (even because this was a preliminary meeting), Ross managed to create a new spirit of cooperation by adopting a mere facilitative style of mediation aimed precisely at crumbling the rigid confrontation developed during the last Manhasset rounds.

On the wake of this informal ensemble, in September 2009, after a meeting of the General Assembly, Morocco surprisingly revealed to the UN Secretary-General that it was ready to discuss the proposal that its counterpart had presented to the UN Security Council in April 2007²⁶³. This unexpected decision by the Moroccan government represented a notable and astonishing step forward toward the resolution of the Western Sahara dispute.

²⁵⁹ UN Security Council Resolution 1871 (2009), par. 2.

²⁶⁰ He met also the representatives of interested countries such as Spain and France.

²⁶¹ UN doc. S/2010/175, Report of the Secretary-General on the situation concerning Western Sahara, par. 11.

²⁶² Ross wanted to avoid the resort to mainstream media for the parties’ accusations.

²⁶³ The proposal called “*Proposal of the Frente Polisario for a mutually acceptable political solution that provides for the self-determination of the people of Western Sahara*”.

This decision was another positive outcome born from the new positive mood generated by the initiatives of the UN Secretary-General Personal Envoy and his facilitative strategy. Indeed, the Moroccan move would have paved the way for the definitive discussion about the political future of Western Sahara since the Polisario Front had long affirmed that it would have discussed Morocco's autonomy proposal only if Morocco would have considered its own plan (including independence as a ballot option for a referendum)²⁶⁴.

Following this overture by Morocco, Ross wanted to seize the moment, but at the same time he believed that it was too early to convene a formal round of discussion. Consequently he decided, in concert with the Polisario Front and Morocco, to hold another informal summit in order to secure the progress on the substantive issues already touched during the Dürnstein meeting. This second informal rendezvous was scheduled, after several consultations between Ross and the parties, for the last days of November or, at least, in the first days of December²⁶⁵.

However, from October until the end of 2009 tensions broke out between the parties with several demonstrations and protests, organized by Polisario, been repressed violently by the Moroccan administration. This fact not only caused the delay of the second informal meeting, but also triggered the Polisario Front which affirmed that maybe Morocco's decision to discuss Polisario's proposal was not reliable. Only the intervention of Algeria, Mauritania and the UN Secretary-General Personal Envoy reached the objective of calming down the tension between the parties.

On 10 and 11 February 2010 Ross was able to convene with Morocco and the Polisario Front in Armonk, New York for the second informal preliminary meeting. In that occasion the liberation movement asked the United Nations to monitor possible human rights violations perpetuated by Morocco, which in turn reject all allegations and opposed this request by the Polisario Front. The Moroccan delegation affirmed that Polisario pushed for humanitarian issues because it did not want to focus on core political issues related to self-determination and the referendum.

After that exchange, the discussion focused on each party proposal presented to the UN Security Council four years earlier in April 2007. They examined the respective plans, but, as the UN Secretary-General Personal Envoy pointed out: "*neither party had accepted the proposal of the other as the sole basis of future negotiations*"²⁶⁶. Therefore, the discussion stalled again with

²⁶⁴ Global Peace Operations Review, *Western Sahara*, Mission Notes, 2010.

²⁶⁵ Ross foresaw the dates of 21-22 November or 4-5 December 2009.

²⁶⁶ UN doc. S/2010/175, Report of the Secretary-General on the situation concerning Western Sahara, par. 17.

Morocco firm on its autonomy proposal and the Polisario Front unwilling to move beyond the inclusion of independence in a future referendum. However, at the end of the second informal meeting the disputants agreed to convene for further discussions in order to unlock the impasse as soon as possible.

In addition, in the first days of March, the UN Secretary-General Personal Envoy undertook another visit to Western Sahara. During this short road-trip he met firstly some representatives of Morocco in Rabat and then the leadership of the Polisario Front in Tindouf. He warned the parties about the fact that a final agreement could have not been achieved by accepting or refusing one party proposal as it was written. Therefore, each disputant should have taken a step towards the other disputant²⁶⁷. He then underlined that there was not a sort of mechanism aimed at forcing someone to accept a determined solution.

Even in this occasion, Ross demonstrated his great facilitative skills, trying to connect the parties with each other. However, this mediation style was not aimed merely at changing their relation (as it is the case of a transformative mediation style), but also at reducing their BATNAs, trying to guide them towards a negotiated agreement that should have been found only thanks to their own efforts.

As it has been pointed out directly by Ban Ki-Moon in his April 2010 report: *“the two informal meetings held in August 2009 and February 2010 produced no movement on the core substantive issues, and more work is needed before a fifth round of formal negotiations can be held”*²⁶⁸. In this sense, the UN Secretary-General reiterated his recommendation to the UN Security Council in order that it called upon the parties to continue the negotiations and *“and to show the political will required to enter into substantive discussions and ensure the success of the negotiations, where possible by drawing on and developing the contents of their two proposals”*²⁶⁹ adding however that *“Imagination and creativity will be needed if progress is to be made”*²⁷⁰.

This impasse was surely due to the tensions erupted between Morocco and the Polisario Front in Fall 2009, but also to the unchanged mentality of the two parties, who still were focused on keeping their respective positions. Indeed, even though they had expressed their will to discuss about their respective proposals of April 2007, they did not engaged in a real examination on such plans.

²⁶⁷ This is supposed to be the outcome of a real and successful mediation. The lack of this sort of quid pro quo has been highlighted since the James Baker era.

²⁶⁸ UN doc. S/2010/175, Report of the Secretary-General on the situation concerning Western Sahara, par. 72.

²⁶⁹ UN doc. S/2010/175, Report of the Secretary-General on the situation concerning Western Sahara, par. 73.

²⁷⁰ UN doc. S/2010/175, Report of the Secretary-General on the situation concerning Western Sahara, par. 73.

Moreover, the UN Secretary-General reported that the humanitarian dimension of the dispute over the future of Western Sahara gave him several concerns mainly due to the issue of landmines close to the berm and the situation in the refugee camps near the border between Western Sahara and Algeria, in the region of Tindouf. In this sense, despite having accomplished some steps forward regarding confidence-building measures, some humanitarian issues remained still at stake.

As a consequence, in the subsequent UN Security Council Resolution 1920 (2010) clear references to the humanitarian dimension of the dispute can be found. Moreover, the Security Council welcomed once again Ban Ki-Moon's recommendation to call upon the parties to engage in substantive negotiations and to show political will. The UN Security Council Resolution 1920 (2010) also endorsed the organization of other informal meetings before the setting up of a formal fifth round of negotiation²⁷¹.

After the adoption of such resolution, Christopher Ross visited once again Western Sahara in March 2010. He was received by the Moroccan King Muhammad VI in Rabat, but also by the Secretary-General of the Polisario Front Mohamed Abdelaziz. Later on he had a meeting with representatives of Algeria and Mauritania, as well as those of other interested countries, for instance Spain and France.

However, since nobody tried to move beyond the stalemate generated after the turbulent Fall 2009, the UN Secretary-General Personal Envoy gave the parties some time in order to reflect and to gather new ideas to present at a new informal meeting to be set up. According to Ross, during the second meeting, the mere examination of the counterpart's proposal had only been superficial; therefore, the disputants would have been given time in order to analyze more in depth the other party's plan.

During such period of reflection, Ross opted for consulting the most influential countries within the UN Security Council, with particular attention to the so-called "Group of Friends". As a consequence, he went to Moscow, Paris, London, Washington and Madrid in order to secure a continuing support for the approach he had decided to follow and to exchange views on how to continue the negotiation process. Not surprisingly, he found wide support for his action, with all the powers involved agreeing on the need to move away from the stalemate created.

In the meantime, when the parties ended their reflection period²⁷², a third informal and preparatory meeting was set up for August. By the way, the disputants agreed to delay such event

²⁷¹ UN Security Council Resolution 1920 (2010), par. 2-3-4.

²⁷² Lasted from March 2010 until August 2010.

since the head of the Polisario Front delegation²⁷³ died few weeks before the opening of that informal summit²⁷⁴. The parties, consequently, decided to wait for the Ramadan period to convene again.

However, few weeks later, on 9 October 2010, tensions erupted again in the territory of Western Sahara when a group of Sahrawi people gathered 15 kilometers out from El Aaiun, in Gdeim Izik, and organized a sort of “protest camp” by establishing themselves in tents. The aim of such demonstration was to demand a more humane treatment for the Sahrawi people who lived under Moroccan rule.

As time went by, the camp enlarged²⁷⁵ a lot due to the arrival of other protesters from all over Western Sahara who, at a certain point, began to demand also independence for the whole territory. This protest, quite atypical with respect to the previous ones, created some embarrassment in the Moroccan authorities which, despite the efforts of the UN Secretary-General Personal Envoy²⁷⁶, consequently decided to forcefully burst into the camp on November 8.

However, the Moroccan raid triggered new riots²⁷⁷ all over Morocco’s Southern Provinces, which lasted for a couple of days and caused few casualties. In addition, the international community reacted negatively to those events, for instance Algeria made harsh comments on such incidents²⁷⁸ and also France condemned the Moroccan behavior. As a response, Morocco conducted a parliamentary inquiry that reached the conclusion that some terrorists supported by Algeria had penetrated among the protesters with the aim of threatening Morocco’ stability²⁷⁹.

Notwithstanding, in that tense atmosphere the Polisario Front and Morocco convened for the third informal meeting between the parties from 8 to 10 November in Long Island, New York. Precisely on the opening day the Moroccan authorities in Western Sahara decided for the forced dispersion of the protesters in the Gdeim Izik camp, threatening the possible positive outcome of the informal talks. In this sense, the Polisario delegation protested vehemently, but basically each party accused the other one of escalating violence.

²⁷³ The honourable Mahfoud Ali Beiba.

²⁷⁴ Obviously, this event would have never permitted the right execution of such meeting since the Polisario delegation had to find a new leader with the same charisma and the same competence.

²⁷⁵ It reached the incredible number of having more than six thousands tents.

²⁷⁶ At that time, Christopher Ross was visiting Western Sahara in order to gain consensus of the actors involved for a third informal meeting between the parties.

²⁷⁷ Often referred to as the “Third Sahrawi Intifada”.

²⁷⁸ Farouk Ksentini (president of the National Consultative Commission for the Promotion and Protection of Human Rights) affirmed that the Moroccan forces committed a genocide and a crime against humanity.

²⁷⁹ UN doc. S/2011/249, Report of the Secretary-General on the situation concerning Western Sahara, par. 12.

THE CONTINUING STALEMATE

Trying to solve the stalemate, Ross pushed directly for focusing on the two plans presented by the parties in April 2007. As it was clear since the beginning of the round, neither the Polisario Front nor Morocco accepted their counterpart's proposal as the basis for further talks.

Curiously, with the help of a Swiss mediator²⁸⁰ from the Ministry of Foreign Affairs of Switzerland, Ross *“proposed to the parties that they reflect on how to create a new dynamic at future rounds by pondering innovative approaches for the negotiating process and identifying subjects that could be discussed irrespective of the final status of Western Sahara [...] The goal was to get the parties to deconstruct their proposals, find subjects to be discussed as building blocks towards the consideration of the core issues, and foster the gradual emergence of trust and confidence”*²⁸¹.

In addition, the UN Secretary-General Personal Envoy reassured the parties about the fact that their respective proposals would not have been abandoned. Eventually, both Morocco and the Polisario Front agreed on such proposal, deciding to use this new step-by-step approach from the following round onwards. The discussion then focused on the expansion and the maintenance of the confidence-building measures adopted by the parties. Regarding this last point, conversely to what happened in the previous rounds, Algeria and Mauritania took actively part into the discussion thanks to Christopher Ross's insistence.

The disputants' acceptance of such method of negotiation does not imply that Ross changed his mediation style from a facilitative one to a formulative one: he did not provide for any new arrangement or concrete proposal of agreement, he did not write down any draft document, he simply proposed a new way of addressing the issue, but keeping its role of facilitator. Therefore the parties still remained the ones who had the responsibility to solve the issue of Western Sahara political status.

Anyway, by the end of the informal meeting Morocco and the Polisario Front on one hand accepted to convene for another preliminary summit, on the other hand agreed to come together for a formal meeting on confidence-building measures and humanitarian issues to be held in Geneva in February of the following year. In the meantime, Ross set up a fourth round of talks, in December 2010, that ended up being basically useless since the echo of the “Third Sahrawi Intifada” and its

²⁸⁰ Whose name remained undiscovered.

²⁸¹ UN doc. S/2011/249, Report of the Secretary-General on the situation concerning Western Sahara, par. 30.

repression was still very present, contributing to weaken the (already weak) confidence between the Polisario Front and Morocco²⁸².

The same poor result, obtained by the UN Secretary-General Personal Envoy after the fourth round of informal talks, was achieved after another preparatory meeting held in the last days of January, from 21 to 23, 2011. There, the parties responded actively to the solicitation of Christopher Ross about exploring different approaches and various subjects for discussion; however, all the innovative approaches and subjects presented were extremely biased in favor of one party or another.

Indeed, as reported by Ban Ki Moon: *“The parties responded by making concrete proposals for over a dozen innovative approaches and some 10 subjects for discussion. Most of these were couched in terms that served the agenda of one or another of the parties, and, as a result, the parties were unable to reach a consensus on any subject other than on the “innovative approach” of having my Personal Envoy intensify and diversify his activities”*²⁸³. In order to disentangle such ensemble of inadequate proposals, Ross asked the parties to present (at a new round of talks) a corrected list of innovative approaches and subjects for discussion, including only those more acceptable to both disputants and revising the most disputed points.

Few weeks later, on February 9 the meeting on confidence-building measures started in Geneva, as agreed upon by the parties at the end of their third round of informal talks. This meeting was chaired by the UNHCR and saw the participation of also Algeria and Mauritania, as well as that of the UN Secretary-General Special Representative for Western Sahara Hany Abdel-Aziz. During the two days in Geneva, the parties expressed their commitment to facilitate more and more the Sahrawi families, who had been separated, to restore a sort of connection by allowing increasingly family visits through the Berm. In addition, Morocco and the Polisario Front agreed on several proposals²⁸⁴, put forward in accordance with the UNHCR, aimed at expanding the total number of participants to the program of confidence-building measures²⁸⁵.

After the rendezvous in Geneva, the informal talks resumed with the sixth round of negotiation from 7 to 9 March 2011 in Mellieah, Malta. The Moroccan delegation was composed by the Foreign Affairs Minister Taïb Fassi Fihri, the Director General of the Intelligence Mohamed

²⁸² UN doc. S/2011/249, Report of the Secretary-General on the situation concerning Western Sahara, par. 32.

²⁸³ UN doc. S/2011/249, Report of the Secretary-General on the situation concerning Western Sahara, par. 33.

²⁸⁴ For instance: the deployment of a reconnaissance team (under the command of UNHCR and MINURSO) in order to conduct a technical assessment about roads' feasibility, the preparation by the UNHCR of a list of possible beneficiaries of those confidence-building measures and the holding of other meetings to discuss the progress on such humanitarian issues.

²⁸⁵ Global Peace Operations Review, *Western Sahara*, Mission Notes, 2011.

Yassine Mansouri, and the Secretary-General of the CORCAS Maouelainin Khalihanna Maouelainin²⁸⁶. In order to put pressure on the parties for making concrete progress in the negotiation, Ross warned them about possible dangerous spill-over effects of the wave of rebellion that reshaped the MENA Region in 2010-2011²⁸⁷. In this occasion, the UN Secretary-General Personal Envoy abandoned his facilitative style of mediation, becoming more similar to a manipulative mediator who usually adopt some techniques in order to put pressure on the disputants.

Then, Ross gave time to both Morocco and the Polisario Front to collect their opinions about each other's proposal (still those presented in April 2007) and to ask the other party some questions. These questions should have been similar to those posed during each of the informal rounds. In this sense, Ross tried to reorganize the parties' ideas with the aim of building a sort of line of reasoning that would help to identify and tackle singular issues.

Consequently, Polisario reformulated some questions on Morocco's proposal that it had asked to the Moroccan delegation during the previous rounds without, however, having received any kind of real answer²⁸⁸. Morocco, similarly, recast some of the questions that it had posed to the liberation movement in the last informal negotiations that they had. Surprisingly, Ross' strategy seemed to bear some fruits when Morocco decided to finally answer to the questions formulated by Polisario, contributing to clarify its autonomy plan.

However, on the other side, the Polisario Front decided not to give any answer to the questions posed by Morocco since, according to the liberation movement, they did not regard the core elements of the Polisario's proposal. Indeed, they dealt with *"the origins and timing of that proposal, the fact that it seemed to have been inspired by the previous peace plan, put forward by my former Personal Envoy, James Baker, and its omission of any discussion of the option of autonomy"*²⁸⁹.

Some progresses have been made in the sixth round of informal talks between the parties. As already stressed, at the end of the previous meeting, Ross requested the parties to present (at the subsequent encounter) a short list of subjects for discussion and innovative approaches to

²⁸⁶ Certainly, the presence of very hostile individuals among the Moroccan delegation was disliked by the Polisario Front.

²⁸⁷ According to the American philosopher Noam Chomsky, the origin of the "Arab Spring" is to be found in Western Sahara with the constitution of the protest camp of Gdeim Izik in October 2010. Conversely, the media identified the extreme protest of Mohamed Bouazizi (a Tunisian peddler) as the beginning of the "Arab Spring".

²⁸⁸ This was particularly due to the fact that Morocco believed that those questions were posed by the Polisario Front in the framework of the inclusion of independence as a ballot option in the referendum.

²⁸⁹ UN doc. S/2011/249, Report of the Secretary-General on the situation concerning Western Sahara, par. 38.

negotiation. At the end of a long debate, the parties agreed to discuss about two proposals about possible subjects for discussion: the dismantling of minefields and the use of Western Sahara's natural resources. Moreover, the disputants decided to tackle three other subjects with relation to innovative approaches to negotiation: the diversification of activities carried on by the UN Secretary-General Personal Envoy, the identification of what can constitute a provocation (and the ways to avoid it) and, eventually, how to calm the whole situation. At the final session of this sixth round of informal talks, after a formal request to do so by the Moroccan delegation, the Polisario Front decided not to engage in a discussion on humanitarian issues, even though in the previous rounds it pushed for discussing such topic²⁹⁰.

Eventually, the parties decided to convene for further informal meetings (to be held quite frequently) until they would have achieved enough progresses to set up a new formal negotiation. These new developments²⁹¹ in the Western Sahara dispute on one side demonstrated the really good mediating work of Christopher Ross, on the other side gave new nourishment to a process of discussion that had been always on the verge of inutility. However, as Ban Ki-Moon affirmed, “[...] the parties are likely to remain committed to the essence of their proposals”²⁹².

After having praised the work of Ross and UNHCR in managing the Geneva meeting regarding humanitarian issues, the UN Secretary-General was particularly worried about the wave of rebellion that hit the MENA Region in those months and its possible implications for Western Sahara. He then warned the disputants about the fact that those same tensions could develop even in Western Sahara if its population did not express itself clearly about the territory's final status. In this sense, he, in accordance with Ross, recommended the UN Security Council to urge the parties to take three different initiatives.

The first one consisted basically in the inclusion of representatives of Western Sahara's population in the round of discussion. The second one consisted in the analysis of each other's proposal, keeping in mind that the approval of the population had to be fundamental. In this sense, Ban Ki-Moon was clear about the fact that each proposal should have included the holding of a referendum that would have assured the right to self-determination. The final initiative regarded

²⁹⁰ UN doc. S/2011/249, Report of the Secretary-General on the situation concerning Western Sahara, par. 39.

²⁹¹ Namely: the questions posed reciprocally, the new subjects for discussion and the new approaches.

²⁹² UN doc. S/2011/249, Report of the Secretary-General on the situation concerning Western Sahara, par. 119.

Western Sahara's governance: therefore, the parties should have discussed also governance issues²⁹³ without necessarily tackle the very nature of the territory's final status²⁹⁴.

Consequently, the UN Security Council included, in its Resolution 1979 (2011)²⁹⁵, an important reference about such three initiatives recommended by Ban Ki-Moon in his report: “[*The UN Security Council*] calls upon the parties to continue to show political will and work in an atmosphere propitious for dialogue in order to enter into a more intensive and substantive phase of negotiations, thus ensuring implementation of resolutions [...] and the success of negotiations, inter alia, by devoting attention to the ideas in paragraph 120 of the Secretary-General's report (S/2011/249)”²⁹⁶.

Moreover, for the first time ever the Security Council included a human rights dimension in a resolution regarding Western Sahara and recognized the need to improve the human rights records: “*Stressing the importance of improving the human rights situation in Western Sahara and the Tindouf camps, and encouraging the parties to work with the international community to develop and implement independent and credible measures to ensure full respect for human rights, bearing in mind their relevant obligations under international law*”²⁹⁷.

A couple of months later²⁹⁸, the parties met again in Manhasset for the seventh round of preliminary talks, keeping in mind the provisions expressed by the UN Security Council in its Resolution 1979 (2011). In that occasion, on one hand Ross wanted to push for making other progresses like those made during the previous round, but on the other hand was conscious of the uncertain equilibrium between Morocco and Polisario. Indeed, it is worth recalling that, even in that period, several scrambles continued to happen between the two disputants, contributing to create a lack of confidence. In turn, this very tense climate made essentially the seven round of informal talks a disappointment. Morocco and the Polisario Front discussed their proposals²⁹⁹ but did not come to an agreement about which one of the two would have constituted the basis for further negotiations. Morocco accused Polisario of pushing for talking about the second Baker Plan, while the liberation movement accused the Moroccans of trying to redirect the talks from the examination of the two proposals to the analysis of new innovative approaches.

²⁹³ He pointed out, for instance, the question of how to structure the different branches of power: executive, legislative and judicial, or the question of how to shape the education system.

²⁹⁴ UN doc. S/2011/249, Report of the Secretary-General on the situation concerning Western Sahara, par. 120.

²⁹⁵ Adopted on April 27.2011.

²⁹⁶ UN Security Council Resolution 1979 (2011).

²⁹⁷ UN Security Council Resolution 1979 (2011).

²⁹⁸ From 5 to 7 June, 2011.

²⁹⁹ They even engaged in a discussion on the mechanism for ensuring the right to self-determination.

The subsequent eighth round of talks, held in Manhasset on July 19 and 20, was useful in order to reexamine each party's proposal and to decide to meet again in Geneva to talk about natural resources and their exploitation. Importantly, this was the last round of informal talks of 2011 since both Morocco and the Polisario Front asked the UN Secretary-General to wait until both have completed their internal reorganization. Consequently, Christopher Ross decided to postpone the holding of another informal meeting to March 2012.

The reasons behind such request by the parties were two: on one hand there would have been the Polisario's congress with the partial swapping of old Sahrawi representatives. On the other hand, Morocco would have faced general elections in November and, generally, the country was already going through several protests from the beginning of 2011. Indeed, The Moroccans started to ask for more accountability and democracy, expressing their intolerance toward King Muhammad VI who, in turn, decided to set up a constitutional commission with the aim of revising the constitution. The king also foresaw a referendum to confirm or reject the new constitution³⁰⁰, which was approved by the Moroccan people on July 1, and set up new general elections for November 2011.

These protests in Morocco lasted until 2012 and were really similar to those experienced by almost all the other countries of the MENA Region. In this sense, the warning signal launched in the first months of 2011 by the UN Secretary-General and his Personal Envoy had been prophetic. Even though those protests did not involve directly Western Sahara population (only partially with the protest camp of Gdeim Izik), they have touched Morocco, forcing the king to allow for a constitutional change. More importantly with respect to the Western Sahara dispute, they contributed to the stalling of negotiations between the Polisario Front and Morocco.

Waiting for the parties to overcome their internal adjustments, Christopher Ross decided to visit not only Western Sahara and its neighboring countries, but also each of the Group of Friends of the UN Security Council³⁰¹. Therefore, between October and November he travelled to London, Moscow, Washington D.C. and, of course, Paris. The aim of such visits and bilateral meetings was firstly that of receiving support for the pursuing of informal talks between the parties, but secondly that of presenting two proposals that Ross have already³⁰² exposed to the Security Council.

³⁰⁰ This new constitution foresaw several new internal changes with respect to the past, for instance: the requirement that the King had to appoint a Prime Minister from the most represented party in the Parliament; the increasing power of the Prime Minister; the possibility for the Parliament to grant amnesties; the decision to make Berber the official language together with Arabic.

³⁰¹ UN doc. S/2012/197, Report of the Secretary-General on the situation concerning Western Sahara, par. 17.

³⁰² On 26 October 2011 he briefed the UN Security Council.

These two ideas conceived by Ross were essentially: the opening of consultations with a cross-section of Western Saharan population and the opening of dialogues on Western Sahara with some Maghreb representatives³⁰³. The goal of these two proposals was that of finding new ideas, opinions and proposals, coming directly from the Western Saharans, on what would have been the territory's destiny. Therefore, this did not mean a change in the negotiation between Morocco and the Polisario Front, but would have served as a way to overcome the stalemate of the discussions. In this sense, the inclusion of Western Saharans as part of the negotiating process was a broadening of thinking already recommended by the UN Secretary-General in his report of 2011³⁰⁴. The responses of the Group of Friends towards this initiative were positive, however, the two disputants disclosed some objections and concerns.

In addition, Ross received wide support regarding another proposal that he put forward, namely the extension of MINURSO personnel's freedom of movement in Western Sahara along with MINURSO's ability "*to carry out transparent reporting on significant developments, as exists in other peacekeeping operations around the world*"³⁰⁵. Moreover, Ross envisaged also the possibility to facilitate more and more visits by journalists and experts to Western Sahara and the Tindouf refugee camps. This strategy of putting again Western Sahara in the spotlights of Western countries was aimed at increasing pressure on Morocco and the Polisario Front to find an eventual solution to their dispute.

Anyway, in the mid of his road trip to the capital cities of the Group of Friends, Ross took also part to a meeting in Geneva from 8 to 11 November as agreed upon by the parties in the eighth round of informal talks. This summit, held between experts of both parties, regarded only the natural resources of Western Sahara and their exploitation³⁰⁶. The two disputants engaged in discussions related to the status of those resources as well as the contracts of the companies which possessed the rights to extract such resources.

Morocco, from his point of view, described Western Sahara as a territory with not so much raw materials, a territory that needed important infrastructures that only Morocco could provide. Conversely, the Polisario's experts disagreed with the Moroccan analysis and denounced the illegality of Morocco's exploitation of the resources of a territory still in the UN list of Non-Self-Governing territories. After the presentation of such different viewpoints, the parties, with the help

³⁰³ Those would have been representatives from the five countries (Libya, Tunisia, Algeria, Morocco and Mauritania) part of the Arab Maghreb Union.

³⁰⁴ UN doc. S/2011/249, Report of the Secretary-General on the situation concerning Western Sahara, par. 120.

³⁰⁵ UN doc. S/2012/197, Report of the Secretary-General on the situation concerning Western Sahara, par. 18.

³⁰⁶ Even though there were some exchanges about political matters.

of Ross, decided to discuss, at a new meeting, further steps to be taken in order to secure access to natural resources and their exploitation.

At the beginning of 2012, the UN Secretary-General Personal Envoy and the UNHCR set up another rendezvous, always in Geneva³⁰⁷, with Morocco and the Polisario Front to carry on the interrupted discussion (started after the third round of informal talks) about confidence-building measures. The parties agreed on several technical issues regarding: family visits by road or with the help of aircrafts provided also by the UNHCR itself and to organize inter-cultural seminars.

Soon afterward, the informal meetings resumed since both parties had solved their internal problems and were now free to discuss Western Sahara's political status. The ninth round of preparatory talks began in Manhasset on 11 March 2012 and saw the UN Secretary-General Personal Envoy still adopting a facilitative approach by fostering the dialogue between the disputants, even though he was also trying to include representatives of Western Saharan population in the discussion.

By the way the ninth round of informal talks marked the continuation of the stalemate regarding the examination of each side's proposal: neither party accepted the other's proposal as a basis for negotiation. However, the representatives of Morocco and those of the Polisario Front discussed also two new subjects: the continuation of minefields' removal³⁰⁸ and their commitment toward the issue of natural resources. In this sense, they agreed to allow experts from UNEP³⁰⁹ to: *"begin building a database as a foundation for future discussions on the state of the environment and natural resources, including an examination of the legal aspects of current exploitation [...]"*³¹⁰, thus pursuing the discussions held at Geneva in late January. At the end of the two days meeting, the parties agreed on convening in June and in July for other two rounds of informal talks.

Disappointed by the recent developments of the negotiations between Morocco and the Polisario Front, the UN Secretary-General reported: *"Each party reads history, the successive resolutions of various United Nations organs, the doctrine and practice of the United Nations, and the domestic, regional and international atmosphere, as well as the consequences of the Arab Spring, as justifying and bolstering its position. The result is positions that present seemingly unbridgeable differences [...]"*³¹¹.

³⁰⁷ This was a two days meeting held on 24 and 25 January 2012 with the participation also of the UN Secretary-General Special Representative Hany Abdel-Aziz.

³⁰⁸ They coordinated their efforts with the United Nations Mine Action Service.

³⁰⁹ The United Nations Environment Program.

³¹⁰ UN doc. S/2012/197, Report of the Secretary-General on the situation concerning Western Sahara, par. 23.

³¹¹ UN doc. S/2012/197, Report of the Secretary-General on the situation concerning Western Sahara, par. 99.

However, as Ban Ki-Moon pointed out, the Arab Spring and the unstable regional environment could hypothetically lead to the modification of each party's position: both on the aim of the negotiation and on the means of ensuring the right to self-determination for Western Saharans, who should be satisfied by the final outcome of the negotiating process. Conversely, the UN Secretary-General was also aware that this hypothetical change could not occur, keeping each party tied to its position. In addition, Ban Ki-Moon expressed full support for the proposals of his Personal Envoy, namely the facilitation of journalists and experts visits to Western Sahara and the inclusion of representatives of the Arab Maghreb Union³¹², as well as representatives of a cross-section of Western Sahara's people, in the talks. Eventually, the Secretary-General expressed his desire to see the expansion of MINURSO's activities and possibilities³¹³.

However, Ban Ki-Moon's report was not received positively by all members of the Security Council, especially by Morocco³¹⁴. Indeed, the Moroccan government was so irritated by the report that, in a note dated 10 May 2012, it withdrew its confidence in the UN Secretary-General Personal Envoy because he was "biased and unbalanced"³¹⁵. Allegedly, the real reason behind this decision was the fact that he had reported several Moroccan interferences with the work of MINURSO. Morocco, therefore, declared Christopher Ross a *persona non grata*³¹⁶.

As a consequence, the negotiation stalled for four months, basically until 25 August 2012 when a conciliatory telephone call between King Muhammad VI and the UN Secretary-General was helpful in order to calm down the situation and to restore Morocco's confidence in the work of Christopher Ross. His return to work coincided with a stillness in Western Sahara where no violent demonstrations were set up in 2012.

Anyway, when such a disruptive event, like Morocco's withdrawal of confidence to Ross, occurred, all the (small) progresses achieved through the holding of several informal meetings had been lost. Consequently, the UN Secretary-General Personal Envoy had to start over basically the whole negotiation process.

In order to do so, Ross met over and over the representatives of the Polisario Front and Morocco in bilateral separate meetings held in New York from August until October when he officially visited Western Sahara and the capitals of the Group of Friends, with particular attention to Spain and France. However, that visit to the disputed territory was due also to another objective

³¹² This because he believed that the Western Sahara's dispute was a conflict that should have interested all North African countries.

³¹³ UN doc. S/2012/197, Report of the Secretary-General on the situation concerning Western Sahara, par. 112.

³¹⁴ Morocco was elected as a member of the UN Security Council by the end of October 2011.

³¹⁵ Morocco then added that Ross was unable of conducting the negotiations toward a concrete solution.

³¹⁶ Souhail Karam, *Morocco slams "biased" U.N. Western Sahara envoy*, Reuters, 17 May 2012.

other than restoring the negotiation process: indeed, it was also aimed at stimulating the participation of Western Saharans in the discussions. Ross, in fact tried to “*widen his contacts beyond official interlocutors to include civil society leaders, including youth, student and women’s groups and academics, as well as parliamentarians and political party leaders*”³¹⁷.

During that visit, Ross was able to have a direct contact with locals and discovered, with a bit of surprise, that it was impossible to determine whether there were more people in favor of Western Sahara independence or in favor of Western Sahara autonomy under Moroccan rule. Although he recognized such difficulty of evaluation, the UN Secretary-General Personal Envoy was even more convinced to include in the talks some representatives of the Saharan people.

However, when he encountered some members of the Polisario Front in the refugee camps of Tindouf, he acknowledged that resuming negotiations (with or without the direct participation of representatives of Western Saharans) was urgent. As a matter of fact, in Tindouf he had the opportunity to talk with many youths and second generation Sahrawi who affirmed their desire to resume hostilities against Morocco because they were annoyed by a negotiation process that produced almost no results. These youths, as pointed out by some Polisario’s representatives, could have been used also by criminal and terrorist groups that was willing to exploit such frustration. Ross call on the Polisario Front to refrain from the use of force, something that would have surely generated other obstacles to the resolution of this long-lasting dispute in the territory of Western Sahara.

On 29 October he met with King Muhammad VI in Rabat where he, first of all, clarified his positions and his honesty as an unbiased and impartial mediator. The king, from his side, affirmed that Morocco was tired of all the rounds of talks that did not generated any concrete step toward the adoption and implementation of the Moroccan autonomy proposal of 2007. However, Ross reminded the king that his mediating efforts relapsed within Chapter VI of the UN Charter³¹⁸. Moreover, the king stressed the fact that, in order to make progresses in the discussion, there should have been an improvement in the relations between Morocco and Algeria³¹⁹.

Regarding Algeria and Mauritania, the UN Secretary-General Personal Envoy had the opportunity to encounter both governments respectively in Algiers and in Nouakchott in the first days of November 2012. While Mauritania confirmed its commitment to support the efforts of Ross

³¹⁷ UN doc. S/2013/220, Report of the Secretary-General on the situation concerning Western Sahara, par. 18.

³¹⁸ Therefore, the United Nations could not impose a certain solution to the parties.

³¹⁹ Agence Marocaine de Presse, *HM the King receives Christopher Ross*, 29 October 2012.

with a “positive neutrality” attitude, Algeria’s President Bouteflika told him that “*any solution that did not provide for a multi-option referendum was not a solution*”³²⁰.

With regards to the question raised by Morocco about its relations with Algeria, Christopher Ross decided to talk directly to each country, firstly with King Muhammad VI and then with the Algerian President Bouteflika. Unsurprisingly, they shared the same idea of pursuing the improvement of their reciprocal relations with no regards to their opposite views about the Western Sahara’s destiny. In order to do so, they agreed on the continuation of holding several bilateral meetings between the two countries. Ross, acting as a real facilitator, offered them the possibility to use his work of “shuttle diplomacy” in order to exchange oral messages regarding the areas and subjects in which their bilateral cooperation should have been enhanced³²¹.

“Shuttle diplomacy” is a kind of mediation between the parties to a conflict or a dispute. In this case, the mediator works as an intermediary that basically goes back and forth from one party to the another delivering messages between the disputants. He, therefore, acts as a sort of messenger who transmit messages between the parties, otherwise the communication would be almost absent. An example of “shuttle diplomacy” is that of Henry Kissinger when he mediated between Israel and the Arab countries following the Yom Kippur War of 1973 by delivering messages back and forth the Middle East countries. “Shuttle diplomacy” can be carried on also by non-state actors such as a religion groups like the Quakers, which mediated in the Sri Lankan Civil War by carrying messages between the government and the Tamil Tigers³²². However, this shuttle diplomacy did not bring to a real negotiation between the parties and eventually the Tamil Tigers have been defeated.

Apart from the discussions about Morocco-Algeria ties, Ross noticed that one of the central theme of the talks he had with all the actors involved in the dispute was that of regional security. Indeed, everyone was aware that many youths in the region (and especially those who lived in the refugee camps) could have been recruited by terrorist groups or criminal networks. The Sahel and the Maghreb regions were therefore potentially at great risk. However, as Ross recognized during his briefing to the UN Security Council, this concern did not affect the parties in a way to change their attitude toward the negotiation process. Consequently, their rigid positions and their

³²⁰ UN doc. S/2013/220, Report of the Secretary-General on the situation concerning Western Sahara, par. 23.

³²¹ These areas and subjects included the fight against security threats, for instance drug trafficking and illegal immigration.

³²² Thomas Princen, *Joseph Elder: Quiet Peacemaking in a Civil War in When Talk Works.*, Deborah Kolb and Associates, 1994.

unreceptiveness did not change and paradoxically were reinforced since the lack of confidence in each other grew dramatically³²³.

In the end the UN Secretary-General Personal Envoy's visit was not so useful in order to make some progress in the discussion about the core issues of the dispute, instead it was helpful in order to rebuild and obtain the parties' commitment to sit again at the negotiation table. After all, this was the main objective of his trip to the region. Furthermore, Ross decided, in accordance with the parties and the neighboring states, not to set up another informal round of talks since, considering the circumstances, it would have been a waste of time³²⁴.

After having travelled across Western Sahara and after having briefed the Security Council on 28 November, the UN Secretary-General Personal Envoy undertook a visit to the capitals of some of the Group of Friends countries from January 28 to February 15, 2013. In addition, he also encountered Germany and Switzerland governments respectively in Berlin and Bern, as well as the United Nations High Commissioner for Human Rights³²⁵ in Geneva.

During those meetings, Ross proposed to his speakers three broad options, regarding how to overcome the stalemate, that should have been submitted to Morocco and the Polisario Front in the upcoming months. The first one consisted in the holding of (separated) bilateral consultations between him and each party during which he would have asked the disputants to present specific ideas on the features and nature of a compromised settlement. This option, aimed at making the parties aware that a negotiation process implies a quid pro quo, would have required the use of "shuttle diplomacy". The second option consisted in requesting both Morocco and the Polisario Front to reformulate their proposals in a different and clearer way, highlighting their possible benefits. Eventually, the last option presented by Ross to the Group of Friends consisted in asking the disputants to accept the fact that an agreement on the final status of the disputed territory was unachievable in the short run, while acknowledging that it was still possible to agree on practical elements related to the governance of Western Sahara³²⁶.

Furthermore, the UN Secretary-General Personal Envoy, during his visit to the capitals of the Group of Friends, had the opportunity to present other three ideas (to be presented to the parties in the upcoming months) aimed at improving the spirit surrounding the rounds of talks. First of all, Ross would have strongly pushed Morocco and Algeria to develop and strengthen their bilateral

³²³ Each party was increasingly more suspicious about the other's intentions and this worsened the whole situation as time went by.

³²⁴ UN doc. S/2013/220, Report of the Secretary-General on the situation concerning Western Sahara, par. 27.

³²⁵ The South African diplomat Navanethem Pillay.

³²⁶ This discussion on such practical features would have not impaired the possibility to reach a final agreement on the status of Western Sahara in the long term.

relations with the help of his “shuttle diplomacy” between Rabat and Algiers. The second idea consisted in assisting UNHCR in stimulating an increase in the contacts between Western Sahara population living west of the Berm and those who still lived in refugee camps. The third idea was the encouraging of the AMU³²⁷ to actively participate in the discussion since the dispute over the final status of Western Sahara “remains the major conflict of the region”³²⁸. On this third point also Ban Ki-Moon was convinced “that regional integration, particularly through reinforcement of the Arab Maghreb Union, is a key element in overcoming the current instability [...]. I am hopeful that progress on this front will help enhance trust between the parties and provide a context conducive to a solution for the Western Sahara conflict”³²⁹.

Faced with such proposals, all the governments consulted decided to support the work of Christopher Ross and his two sets of options. In a joint statement, the Group of Friends called on Morocco and the Polisario Front to cooperate as much as possible with the UN Secretary-General Personal Envoy and to be very flexible in approaching future negotiations. However, Ross witnessed their concerns regarding a possible spillover effect of the conflict in Mali³³⁰. They believed that such war could have negative consequences by radicalizing the youths living in the Tindouf area, but they also believed that it could generated positive effects on the negotiation process by pushing the parties to discuss in a more substantive way, fearing these possible negative consequences. Ross, instead, reminded that the disputants had never been influenced by external events, such as the Arab Springs, so he did not expect any change in the negotiation process due to the conflict in Mali.

As agreed upon by Morocco and the Polisario Front, no further talks was held for a while. Anyway, the UN Secretary-General Personal Envoy undertook another visit to Western Sahara in order to submit to the parties the ideas and options agreed upon during his trip to the Group of Friends’ capitals. Moreover, it was also time, to foster his “shuttle diplomacy” between Morocco and Algeria. Consequently he visited Western Sahara in the second half of March, until the beginning of April 2013.

³²⁷ Arab Maghreb Union.

³²⁸ UN doc. S/2013/220, Report of the Secretary-General on the situation concerning Western Sahara, par. 32 (c).

³²⁹ UN doc. S/2013/220, Report of the Secretary-General on the situation concerning Western Sahara, par. 114.

³³⁰ The Mali War began in January 2012 and is still going on between the governmental forces and the National Movement for the Liberation of Azawad (MNLA), who fights for the independence of Northern Mali, an area mostly populated by Tuareg people. However, also terrorist groups like Al-Qaeda and the Islamic State have taken part to this conflict.

A NEW APPROACH

That second visit, therefore, marked the end of an approach based on several rounds of talks between the parties under the aegis of Christopher Ross and the beginning of a new approach characterized by bilateral consultations with the Polisario Front and Morocco, but also with the neighboring States, in order to examine whether they were ready (and flexible enough) to discuss the features of a solution, keeping in mind that it would have been a compromise. As said before, this new approach included also the use of “shuttle diplomacy” by the UN Secretary-General Personal Envoy, who, actually, undertook several trips to the territory of Western Sahara from 2012 onwards. It is important to stress that this change in the approach adopted did not correspond to a change in Ross’ mediation style: in fact, he kept a facilitative strategy, but he only changed the way in which he carried it on.

When Ross arrived in Western Sahara on March 20 he began consulting with the parties who, despite the Group of Friends’ statement, maintained their own well-known positions and agreeing only on the new approach of Christopher Ross (bilateral negotiations and shuttle diplomacy). Even during his second visit he had the opportunity to meet local population who was divided among those in favor of the Moroccan proposal and those in favor of independence. However, he noticed that even among those who showed support for an autonomous Western Sahara under Moroccan rule, no one really trusted Morocco, they wanted guarantees *“to ensure that Saharans would obtain and retain a predominant role in the governance of the Territory. Many also felt that human rights concerns had to be addressed immediately if the autonomy proposal was to be credible”*³³¹.

After a time off, during which there was plenty of demonstrations in Western Sahara like that³³² of El-Aaiun on May 5, Ross undertook another visit to the territory in October 2013. On that occasion, when he met the parties and the neighboring states of Mauritania and Algeria, he asked them to set up small working groups that would have directly worked with him in order to tackle only two main issues: the substance of a political solution acceptable to both parties and the means by which the Saharans would have then exercised their right to self-determination.

Along with this request by the UN Secretary-General Personal Envoy, Ross engaged in his work of shuttle diplomacy between the two opposite sides of the dispute. When he met with Moroccan authorities, he recognized that they were a bit concerned by not discussing their

³³¹ UN doc. S/2014/258, Report of the Secretary-General on the situation concerning Western Sahara, par. 18.

³³² During such turmoil, people protested against the UN Security Council Resolution 2099 (2013) since it did not include any human rights monitoring within the MINURSO’s mandate.

autonomy proposal. Consequently, Ross reminded them the Group of Friends' statement on the need to be as much flexible as possible. Morocco, however, expressed its doubts about the role of Algeria in the dispute: according to Moroccan authorities, it should have been more directly involved. This doubt was linked to the already expressed suspicion regarding the Morocco-Algeria ties. Anyway, Ross responded by affirming that the Algerian government had already stated its readiness to be more active as long as Saharans' right to self-determination was respected.

As already done by Morocco, when Ross met the Polisario Front representatives they voiced concerns about the fact that the right to self-determination of the people of Western Sahara should have been guaranteed by a three-options referendum with the inclusion of independence as one of the ballot options. However, Ross reiterated that the UN Security Council had already expressed the condition that any solution had to guarantee the right to self-determination of the Sahrawi people³³³. In addition to such unease, the Polisario Front welcomed the increase in the visits by journalists, experts and diplomats from all over the world to Western Sahara.

After having talked with Morocco and the Polisario Front, Christopher Ross went to Algeria and Mauritania. In the former, he met with (among others) Prime Minister Abdelmalek Sellal and the Minister for Foreign Affairs Ramtane Lamamra, who affirmed Algeria's unwillingness to become a real party in the negotiation³³⁴. On that occasion, Ross described the role he had envisaged for Algeria: an active role in pushing the disputants toward a mutually acceptable solution. In the latter, Ross met with Mauritania President Mohamed Ould Abdel Aziz who basically reiterated the position of Mauritania toward the conflict, that of a "positive neutrality".

However, throughout his third visit to Western Sahara and more specifically when he was in Mauritania, Ross realized that part of the Sahrawi population, despite being in favor of the territory's independence, did not share the same view of the Polisario Front³³⁵. Many, indeed, believed that neither side of the dispute represented rightly the Sahrawi people, whose main concerns regarded: their active role in the discussions, the continuation of family reunifications, the exploitation of Western Sahara's resources (from a legal point of view), the preservation of their cultural identity and the exploration of new ways to funnel international aid into the territory. Eventually, by the end of 2013 Ross decided to visit once again the countries parts of the Group of Friends in order to brief them about the situation and to obtain further support for his efforts.

³³³ Even though the UN Security Council had not make any reference about the specific form that such guarantee might take, whether a referendum or something else.

³³⁴ The Algerian authorities added that the issue of Algeria's relations with the Kingdom of Morocco would have remained separated from the issue of Western Sahara.

³³⁵ UN doc. S/2014/258, Report of the Secretary-General on the situation concerning Western Sahara, par. 23.

As regards Ross' shuttle diplomacy, he came back to the region for another visit from January 18 to 30, 2014, in order to present "*a number of questions to the parties to clarify the issues, their positions and their readiness to be flexible*"³³⁶. He, then encountered each party's working group to whom he submitted such questions, which were deliberately aimed at pushing the disputants away from their positions, thus creating a thorny atmosphere. In this way, Ross wanted to test each side's degree of flexibility and ability to work outside of its comfort zone. To put even more pressure on the parties, Ross warned them by saying that the UN was running out of options regarding the solution to Western Sahara dispute and therefore no more delays would have been tolerated (even by the Group of Friends within the UN Security Council). As already done when he warned the parties about possible spillover effects of the Arab Spring, even in this occasion Ross abandoned his facilitative strategy and adopted a more manipulative style of mediation, increasing pressure on the parties for making progress.

Furthermore, also the UN Secretary-General Ban Ki-Moon expressed his anxiety about a process in which both Morocco and the Polisario Front had demonstrated their unwillingness to go beyond their respective positions established in their well-known proposals of April 2007: "*I ask that the international community, and in particular the neighboring States and the members of the Group of Friends, to provide support for this endeavor. If, even so, no progress occurs before April 2015, the time will have come to engage the members of the Council in a comprehensive review of the framework that it provided for the negotiating process in April 2007*"³³⁷. Therefore, Ban Ki-Moon set even a deadline for both Morocco and Polisario: that of April 2015, eight years after the presentation of their respective proposals.

One month later, in March 2014, the UN Secretary-General Personal Envoy undertook another visit to the region in order to collect the responses to the questions he had previously posed to the parties. Despite of his pressure, both Morocco and Polisario Front, through their respective working groups, seemed to have made no progresses since they showed almost no flexibility. The only quite positive result consisted in an agreement to a code of conduct that forbade them³³⁸ to release press statements regarding their discussions, imposing a sort of "confidentiality rule".

Throughout 2014 no further developments was made: in October, Ross briefed the UN Security Council, while in the first weeks of the new year he resumed visiting Western Sahara. Indeed, from February 11 to 23 he went to Morocco, Algeria, Mauritania and the refugee camps near Tindouf where he had the opportunity to discuss with all the actors involved which would have

³³⁶ UN doc. S/2014/258, Report of the Secretary-General on the situation concerning Western Sahara, par. 27.

³³⁷ UN doc. S/2014/258, Report of the Secretary-General on the situation concerning Western Sahara, par. 94.

³³⁸ But also the UN Secretary-General Personal Envoy.

been the next steps in the negotiations. Disappointingly, both Morocco and the Polisario Front demonstrated once again their total unwillingness to meet half way. In particular, the liberation movement expressed its uneasiness with relation to the United Nations because its authorities believed that they had not been considered too much by the organization³³⁹. They also felt that many Sahrawi³⁴⁰ were so frustrated that a new military confrontation with Morocco would have been well-regarded. With relation to the security issue, Mauritania complained about the drug trafficking that have been organized from Western Sahara to Mali; in fact, according to the President of Mauritania, that trafficking would have guaranteed thousands of dollars to the terrorist groups active in the Malian Civil War.

To continue his work of shuttle diplomacy, Ross returned to the territory another time in the last week of March 2015, one month before the deadline of April set by the UN Secretary-General in his previous report. He therefore met again with the parties and the neighboring states: all his interlocutors stressed the fact that the it was too early to organize a new round of direct talks was definitely too soon. In general, however, no progress were made throughout 2014 and the beginning of 2015: the UN Secretary-General Personal Envoy continued his work of going back and forth from Rabat to Tindouf and vice versa, holding small bilateral consultations with the parties in accordance with the new approach held. In this regard, Ban Ki-Moon reported that by April 2015 *“it is too early to provide an indication of whether or not the new approach of bilateral consultations and shuttle diplomacy launched by my Personal Envoy will prove fruitful. [...] Forty years after the beginning of this conflict and eight years after presentation of the parties’ proposals, there can be no justification for continuing to maintain the status quo”*³⁴¹.

In addition, the UN Secretary-General decided to send two letters to the parties in which he described his concerns, related mainly to the potential dangers³⁴² of the situation, and his never-ending commitment to solve once and for all the dispute over Western Sahara’s final status. He also dispatched his Personal Envoy to the region several times³⁴³ throughout 2015 in order to conduct the bilateral consultations and his work of shuttle diplomacy. The final aim was to convince the parties to convene again for a face-to-face discussion.

³³⁹ This because the Polisario Front (and also Algeria) thought to have been treated unequally since Ban Ki-Moon made a phone call on January 22 to King Muhammad VI in order to reassure his majesty that the UN Secretary-General reports would have remained objective and unbiased. Indeed, previously Morocco expressed concerns about the content of Ban Ki-Moon’s report of 2014.

³⁴⁰ Not only the youths living in the refugee camps, but also part of the military apparatus of the Polisario Front.

³⁴¹ UN doc. S/2015/246, Report of the Secretary-General on the situation concerning Western Sahara, par. 74.

³⁴² For instance the radicalization of frustrated youths or the new routes explored by drug traffickers or even the spread of Islamic terrorism.

³⁴³ Christopher Ross four visits to the region: from August 31 to 10 September, from October 19 to 28, from 22 to the end of November and from 16 to 25 February of the following year.

During such visits, Ross had the opportunity to pursue his work of shuttle diplomacy³⁴⁴. When he was in Rabat, the Moroccan authorities wanted to introduce two of the key elements of Morocco's position as ideas to be examined by the other party: firstly the inclusion of Algeria as a formal part in the negotiations and secondly the Moroccan view of self-determination³⁴⁵. The Moroccan authorities, therefore, wanted Ross to explore such issues with the Polisario Front (and the neighboring states) in a fruitful exchange of views done through shuttle diplomacy. However, as soon as such ideas were presented to the Polisario's officials, they rejected any kind of discussion since, according to them, Morocco was only trying to delay and reshape the negotiation process. Furthermore, Algeria refused to enter formally into the discussion as a real party and labeled the Moroccan idea as a mere attempt to "bilateralize" the whole dispute³⁴⁶.

In addition to Ross' visit to the territory, also the UN Secretary-General himself undertook a trip to Western Sahara in the first week of March 2016, from 3 to 7. According to Ban Ki-moon, his visit had four major objectives: to make a personal assessment of the situation; to pay tribute to the MINURSO personnel; to attest the humanitarian conditions of the refugee camps³⁴⁷; to discuss other issues with leaders of the parties and of the neighboring states. Since King Muhammad VI was unable to receive Ban Ki-moon due to agenda impediments, the UN Secretary-General went only to Mauritania, Algeria and Tindouf³⁴⁸ where he held several discussions both on the status of the negotiating process and on the status of the people living in the refugee camps³⁴⁹. However, he was only able to acknowledge the fact that the whole discussions remained in a total stalemate.

In the meantime, Christopher Ross have briefed the UN Security Council on 8 December 2015 when he has affirmed that while the Polisario Front was ready to resume direct negotiations, Morocco was not ready to do so without relevant preparation through Ross' shuttle diplomacy. The UN Secretary-General Personal Envoy has also added that, given the security concerns related to many issues, a positive outcome of the negotiation process was more necessary than ever.

Shortly after Ban Ki-moon's visit to Western Sahara, Morocco protested for some statements³⁵⁰ released to the international press by the UN Secretary-General and order the

³⁴⁴ In addition to having visited Western Sahara, Ross undertook also several visits to the countries members of the Group of Friends in order to make sure their support for his efforts.

³⁴⁵ Morocco believed that the respect for the right to self-determination could occur in the constant exercise of human rights, with particular attention to economic, cultural and social development.

³⁴⁶ UN doc. S/2016/355, Report of the Secretary-General on the situation concerning Western Sahara, par. 25.

³⁴⁷ This was the first visit to the refugee camps in Western Sahara by the UN Secretary-General since 1998.

³⁴⁸ Precisely in the Rabouni camp, the administrative siege of the exiled government of the SADR.

³⁴⁹ The UN Secretary-General had the opportunity to witness the frustration and disappointment of many youths living in such areas.

³⁵⁰ Rick Gladstone, *Morocco Asks That U.N. Close Western Sahara Military Office*, The New York Times, 21 March 2016.

withdrawal of 84 MINURSO's members from his territory within three days. The tension between Morocco and the United Nations escalated until the UN Security Council adopted Resolution 2285 (2016) by which it *"Emphasizes the urgent need for MINURSO to return to full functionality; requests the Secretary-General to brief the Council within 90 days on whether MINURSO has returned to full functionality and expresses its intention, if MINURSO has not achieved full functionality, to consider how best to facilitate achievement of this goal;[...] Calls upon all parties to cooperate fully with the operations of MINURSO, including its free interaction with all interlocutors, and to take the necessary steps to ensure the security of as well as unhindered movement and immediate access for the United Nations and associated personnel in carrying out their mandate, in conformity with existing agreements"*³⁵¹.

A couple of months later, in June 2016, Christopher Ross continued his work of shuttle diplomacy by consulting the parties and the neighboring states on the possibility to resume face-to-face talks, but he faced the opposition of the Moroccan government. Moreover, Morocco did not seem very enthusiast about having the UN Secretary-General Personal Envoy visiting the region³⁵², but this was mainly due to the holding of general elections in the country on October 7, 2016. By that time, however, Morocco have already shown its uneasiness with the work of Christopher Ross and the fact that King Muhammad VI did not have time to meet with him was a signal of Morocco's impatience. The tension culminated with a resignation letter, sent by Ross on 23 January 2017 and (the day after) with another letter sent by Morocco to the new UN Secretary-General³⁵³, affirming that his Personal Envoy was no more welcomed in the kingdom³⁵⁴.

Another relevant event that hampered Ross' involvement in 2016 was the worsening of the already bad relations between Morocco and the Polisario Front. Indeed, started on August 14, the intense confrontation over the small strip of land near Guerguerat saw the risk of a collapse in the ceasefire signed in 1991 by the parties. The confrontation regarded the building of a road linking, from Guerguerat, the Moroccan controlled territory with Mauritania and passing however through the UN buffer strip. The Polisario Front responded by deploying its troops close to those of Morocco's Royal Gendarmerie (who was escorting the civilians who was building the road). The confrontation, with the help of MINURSO and that of Antonio Guterres, ended when Morocco decided to withdraw its troops on 26 February 2018.

³⁵¹ UN Security Council Resolution 2285 (2016), par. 2-3-5.

³⁵² UN doc. S/2017/307, Report of the Secretary-General on the situation concerning Western Sahara, par. 24.

³⁵³ Ban Ki-moon ended his mandate in 2016, while the next UN Secretary-General, António Guterres, took office on 1st January 2017.

³⁵⁴ UN doc. S/2017/307, Report of the Secretary-General on the situation concerning Western Sahara, par. 31.

Anyway, the UN Secretary-General eventually accepted Ross' resignation at the end of April 2017, paying tribute to a mediator that for 8 years tried to break through the impasse over the final status of Western Sahara. In addition, Antonio Guterres disappointingly affirmed in his report: *"Despite the achievements of two successive Personal Envoys in providing the necessary facilitative framework, the parties have not taken advantage of this framework to engage in a cooperative search for a solution in accordance with the guidance of the Security Council. The fundamental difficulty is that each party has a different vision and reading of the history and documents relating to the conflict"*³⁵⁵. Finally, on 16 August 2017, Mr. Horst Köhler has been appointed as the new UN Secretary-General Personal Envoy for Western Sahara.

OVERALL ASSESSMENT

The American diplomat Christopher Ross demonstrated, along his 8 years as the UN Secretary-General Personal Envoy for Western Sahara, to have been a master facilitator. Indeed, as soon as he took office, he began working hard in mediating the dispute between Morocco and the Polisario Front, using a facilitative style. However, it is possible to basically divide in two phases his 8 years dealing with Western Sahara.

The first one goes from his appointment in 2009 to the beginning of 2013 when he tried to adopt a new approach toward both the parties and the negotiation process. This first phase is characterized by the setting up of several informal talks with Morocco, the Polisario Front and the neighboring countries. those preliminary meetings were aimed at setting the stage for the resumption of formal talks, abandoned after the failures of his predecessor, Peter van Walsum. In this sense, Morocco's opposition to further formal discussions had been fundamental.

The second phase of Ross' period as the mediator of the dispute over Western Sahara coincided with a change in his approach toward a negotiation process that recorded no progress. Such phase was characterized by the holding of small bilateral consultations between Ross and the parties (plus the neighboring countries of Mauritania and Algeria), but it was also dominated by an intense work of shuttle diplomacy carried on by the UN Secretary-General Personal Envoy. However, as it has been said before, even if he changed his approach, his mediation style remained that of a facilitator. Only in extreme cases he seemed to have adopted a manipulative strategy by escalating pressure on the parties, but such cases have been very rare and eventually this does not imply that he really embraced a manipulative mediation style.

³⁵⁵ UN doc. S/2017/307, Report of the Secretary-General on the situation concerning Western Sahara, par. 82.

Anyway, even during Ross' era some external events had a strong influence on the dispute and on the way the parties discussed. In particular, the security concerns played a key role in shaping the activity of the UN Secretary-General Personal Envoy, forcing him to put pressure on Morocco and Polisario Front. That of Western Sahara, indeed, has been a regional dispute that could have been subject to spillover effects from different events, for instance the Arab Spring or the War in the near Mali.

In addition to external events, the work of Christopher Ross has been also impaired by internal factors such as the parties' unwillingness to proceed in further rounds of direct talks or their last military confrontation near Guerguerat, an event that almost caused the collapse of the ceasefire and the resumption of violence between Morocco and the Polisario Front. More generally, the disputants unreceptiveness (or probably unwillingness) to move away from reiterating their respective positions was surely at the basis of the UN Secretary-General Personal Envoy's lack of results.

In conclusion, Ross showed to have been a great facilitator using also shuttle diplomacy and different approaches adaptable to different phases. However, using Ho Won Jeong evaluation method, Ross's efforts ended up being an almost total failure since he did not manage to make any notable progress in the negotiation as well as in the parties' relations, which has further deteriorated. Maybe the only positive element of his mandate as the UN Secretary-General Personal Envoy consists in his efforts to build a strong support for him among the members of the Group of Friends. Obviously, also his predecessors held good relations with such countries visiting their capitals and meeting with their leaders, but not as frequently as Ross did.

THE SITUATION NOWADAYS

After Christopher Ross' resignation, Antonio Guterres appointed Horst Köhler as his new Personal Envoy for Western Sahara. Köhler is a high profile figure and former President of Germany who has been previously the Managing Director of the Executive Board of the International Monetary Fund. Horst Köhler has already undertaken one visit to the region in order to rebuild confidence between the parties and to assess their willingness to cooperate in the solution of their dispute. It is surely too soon to analyze his work as a mediator in the dispute between Morocco and the Polisario Front, but allegedly he is trying to restore a face-to-face dialogue between the parties involved.

CONCLUSIONS:

In conclusion, in order to provide a final answer to the question posed at the beginning of this document, it is now time to perform two final tasks: first of all, it is worth summing up the entire reasoning developed in this dissertation thesis, while finally there will be a brief comparison between the mediation styles adopted by each of the UN Secretary-General Personal Envoys.

The first two chapters have been helpful in order to have a complete background of the events both from an historical and from a theoretical point of view. In particular, it is worth recalling the existence, according to William Zartman and Saadia Touval, of three major mediation styles: facilitative, formulative and manipulative. Each of them implies different techniques and has its own peculiarities. In addition to these three, a fourth mediation style has been added: the transformative one, which has been theorized by Robert Bush and Joseph Folger. With regards to the evaluation system adopted to assess the work of each mediator, the framework used has been the one provided by Ho Won Jeong.

The third chapter has described the work of James A. Baker from his appointment as the UN Secretary-General Personal Envoy in 1997 until his resignation in 2004. It has been highlighted his predominant use of a formulative mediation style, by which he managed to draft and propose two comprehensive plans to Morocco and the Polisario Front during their negotiations. Moreover, it is also important to stress Baker's use of a facilitative (if not transformative) style in the beginning of his mandate, a strategy that brought the parties to sign the Houston Agreements. Finally, the mandate of Baker coincided with the adoption, by the UN Security Council, of the "third option" strategy.

Chapter four, instead, has dealt with Peter van Walsum, a Dutch diplomat who remained in office for less than four years, from 2005 to 2008. During such period, he tried to rebuild a positive atmosphere between the parties since external variables, as well as internal factors, have contributed to the deterioration of the relations between Morocco and the Polisario Front. Therefore, he decided to adopt sometimes a transformative mediation style, but also a facilitative one. He demonstrated to have been a good facilitator and managed to convene several rounds of talks between the parties in Manhasset. Eventually, however, frustration mounted and he lost the support of the UN Secretary-General, as well as that of the UN Security Council.

Finally, in the last chapter, there has been the analysis of Christopher Ross' era as the UN Secretary-General Personal Envoy from 2009 to 2017. During such period it is worth recalling that

he adopted two different approaches: the first one based on the organization of several informal talks, with the aim of preparing the ground for the resumption of formal negotiations, and the second one based on the use of shuttle diplomacy. In this regard, he used mainly a facilitative mediation style, even though he changed his approach toward negotiation.

In conclusion, it can be noticed that each of the mediators examined has adopted a facilitative mediation style at least once during his mandate. This is due mainly to the fact that, typically at the beginning of his mandate, everyone wanted to build a positive atmosphere between him and the parties. Then, it is important to stress that among all, James Baker is the one who has dared the most by performing the role of a formulator. This was mainly due to two main factors: the support by the UN Security Council and his status as a valuable mediator. The other two mediators, Peter van Walsum and Christopher Ross, even though they are respectable mediators, they have not been perceived as authoritative as Baker. Moreover, during their mandates there can be noticed a general worsening in the relations between the parties, as well as a changed international context in which the security dimension has become fundamental. In this sense, the countries allied to Morocco gained much more influence in the dispute and played a key role in the maintenance of the status quo. Thus, these external factors, together with the parties' stiffening on their respective positions, forced van Walsum and Ross to adopt mainly a facilitative mediation style. However, it is wrong to consider their mandates identical since they adopt different approaches, while surely maintaining the same mediation style. Furthermore, van Walsum used also some hints of a transformative style, while Ross embraced also a manipulative one (mainly by leveraging the Group of Friends). For a more schematic comparison between the three mediators please use the info graphics provided in Annex I, II and III of this thesis.

Anyway, no one of these three mediators have managed to solve the dispute over the final status of Western Sahara. After all, a mediation is effective when the parties are committed to negotiate in order to find a mutually acceptable solution. As long as Morocco and the Polisario Front remain firm on their respective positions, unwilling to recognize the need to adopt the principle of *quid pro quo*, the issue of Western Sahara will remain open and unsolved.

BIBLIOGRAPHY:

BOOKS AND ARTICLES:

- Besenyő János, *Western Sahara*, Pécs Publikon, 2009.
- William Zartman, *Peacemaking in International Conflict: Methods & Techniques*, United States Institute of Peace; Revised edition (2007).
- Ho Won Jeong, *Conflict Management and Resolution: An Introduction*, Routledge, 2009.
- Geoff R. Berridge, *Diplomacy: Theory and Practice*, Palgrave Macmillan (2015).
- Dalia Dassa Kaye, *Talking to the enemy: track two diplomacy in the Middle East and South Asia*, RAND Corporation, 2007.
- Marie Juul Petersen, *International Religious NGOs at The United Nations: A Study of a Group of Religious Organizations*, The Journal of Humanitarian Assistance, 2010.
- Anna Theofilopoulou, *The United Nations and Western Sahara: A Never-ending Affair*, United States Institute of Peace, 2006.
- Jonathan Wilkenfeld and Kathleen Young, *Mediating International Crises*, Routledge, 2005.
- Jacob Bercovitch, *Resolving International Conflicts: The theory and practice of mediation*, Boulder, CO: Lynne Rienner, 1996.
- Robert Bush and Joseph Folger, *The Promise of Mediation: The Transformative Approach to Conflict*, Jossey-Bass; Revised edition (October 25, 2004).
- Ahmed Boukhari, *The International Dimension Of The Conflict Over The Western Sahara And Its Repercussions For A Moroccan Alternative*, Real Instituto Elcano, 2004.
- Stephen Zunes, Jacob Mundy, *Western Sahara: War, Nationalism, and Conflict Irresolution*, Syracuse University Press, 2010
- Ignacio Cembrero, *Interview with Peter van Walsum*, El País, 08 August 2008.
- Global Peace Operations Review, *Western Sahara, Mission Notes*, 2010.

UN SOURCES:

- UN Charter, Chapter 11, Article 73
- UN Charter, Chapter 11, Article 74
- UN General Assembly Resolution 1514 (1960).
- UN General Assembly Resolution 3292 (1974).
- UN General Assembly Resolution 3458/A (1975).
- UN General Assembly Resolution 3458/B (1975).
- UN General Assembly Resolution 34/37 (1979).

- United Nations Visiting Mission to Spanish Sahara, 1975, General Assembly, 30th Session, Supplement 23, UN Document A/10023/Rev
- United Nations Treaty Series: Declaration of Principles on Western Sahara by Spain, Morocco and Mauritania.
- *Proposal of the Frente Polisario for a mutually acceptable political solution that provides for the self-determination of the people of Western Sahara*, 10 April 2007.
- *Moroccan Initiative for Negotiating an Autonomy Statute for the Sahara Region*, 11 April 2007.
- UN Security Council Resolution 380 (1975).
- UN Security Council Resolution 1056 (1996).
- UN Security Council Resolution 1309 (2000).
- UN Security Council Resolution 1359 (2001).
- UN Security Council Resolution 1429 (2002).
- UN Security Council Resolution 1495 (2003).
- UN Security Council Resolution 1541 (2004).
- UN Security Council Resolution 1783 (2007).
- UN Security Council Resolution 1813 (2008).
- UN Security Council Resolution 1871 (2009).
- UN Security Council Resolution 1920 (2010).
- UN Security Council Resolution 1979 (2011).
- UN doc. S/1997/742.
- UN doc. S/1999/483.
- UN doc. S/2000/131.
- UN doc. S/2000/1029.
- UN doc. S/2001/613.
- UN doc. S/2002/178.
- UN doc. S/2003/565.
- UN doc. S/2004/325.
- UN doc. S/2006/817.
- UN doc. S/2007/385.
- UN doc. S/2009/200.
- UN doc. S/2010/175.
- UN doc. S/2011/249.
- UN doc. S/2012/197.
- UN doc. S/2013/220.
- UN doc. S/2014/258.
- UN doc. S/2015/246.
- UN doc. S/2016/355.

ANNEX I

James Baker 1997 - 2004

Mediation Style

- Facilitative
- Formulative



Approach

- Face-to-face discussion
- Push for referendum
- Political Option
- Autonomy



Major Acts

- Houston Agreements (1997)
- Framework Agreement (2001)
- Peace Plan (2003)



Actors Involved

- Morocco
- Polisario Front
- UN
- Neighboring countries



Obstacles Faced

- Historical Context
- Security Council Immobilism
- Identification Process
- Morocco's Rigidity



Outcome

- Creation of positive atmosphere
- Failed attempt to draft a satisfying proposal
- Resignation



ANNEX II

Peter van Walsum 2005 - 2008

Mediation Style

- Transformative
- Facilitative



Approach

- No Drafting Plans
- Support for Parties' Own Proposals
- 4 Rounds of direct negotiation



Major Acts

- Proposal of the Frente Polisario for a mutually acceptable political solution (10 April 2007)
- Moroccan Initiative for Negotiating an Autonomy Statute for the Sahara Region (11 April 2007)
- Communiqués of Manhasset Negotiations



Actors Involved

- Morocco
- Polisario Front
- UN
- Neighboring countries (separately)



Obstacles Faced

- Independence Intifada (May - October 2005)
- Historical Context (War on Terror)
- Security Council Immobilism
- Morocco's Rigidity



Outcome

- Failure at overcoming lack of confidence between the parties
- Failed attempt to discuss each proposal



ANNEX III

Christopher Ross 2009 - 2017

Mediation Style

- Facilitative
- Some traces of manipulation



Approach

- Informal talks
- Discussion on parties' proposals
- Focus on Group of Friends
- Bilateral consultations
- Involvement of Sahrawi people
- Shuttle Diplomacy



Major Acts

- Convention of nine informal meetings
- First Geneva meeting on confidence-building measures (February 2011)
- Geneva meeting on natural resources (November 2011)
- Second Geneva meeting on confidence-building measures (January 2012)



Actors Involved

- Morocco
- Polisario Front
- UN + Group of Friends
- Section of Sahrawi people
- Neighboring countries



Obstacles Faced

- Regional turmoil (Arab Spring)
- Confrontation in Guerguerat
- Security Council Immobilism
- Morocco's will to include Algeria as a party
- Parties' rigidity



Outcome

- No progress in negotiations
- No progress in the parties' relations
- Progress on technical issues (confidence-building measures and natural resources)



ANNEX IV



ABSTRACT

The conflict over Western Sahara, a territory situated between Morocco, Algeria and Mauritania and disputed by Morocco and the liberation movement called Polisario Front, has considerably characterized the region of Maghreb from different points of view. Previously known as “Spanish Sahara”, this territory experienced an harsh war, fought by the Polisario Front and Morocco, during the Eighties and ended thanks to the UN intervention in 1991. The parties, indeed, signed a ceasefire that is still in place nowadays and started a long negotiation, under the auspices of the UN in the person of the UN Secretary-General Personal Envoy, in order to find a definitive solution on the future status of Western Sahara. However, such mediation has not solved the dispute yet since the parties continue to remain firm on their respective positions: Morocco considers Western Sahara to be part of its territory (admitting at most some sort of autonomy for such area), while Polisario wants Western Sahara to become an independent state for the Sahrawi people.

Anyway, the question at the basis of this thesis comes out rightly from these attempts of mediation made by different Personal Envoys of the UN Secretary-General throughout the years, taking into consideration only the time span that goes from 1997 to 2017. Indeed, the aim of this paper is precisely that of answering to the following question: which mediation style have been mainly adopted by each of these Personal Envoys? Anyway, as it will be explained later, these mediators have often adopted more than one style, combining different strategy in order to achieve a mutually acceptable, definitive and long-lasting solution for the dispute over the final status of Western Sahara.

First of all, it is necessary to explain what a mediation is. A general definition can be find in the words of both Jacob Bercovitch and Ho Won Jeong: a mediation is a voluntary form of conflict management that is characterized by a non-coercive, nonviolent, and, ultimately, nonbinding form of intervention. The mediator is supposed to be a neutral and impartial third party, even though this impartiality may be limited to certain conditions. Even though the mediator possesses an active role in the dispute resolution, the parties maintain control over the entire process and keep their faith in their own hands. Indeed, the outcome of the mediation process should be accepted or refused by both the parties at any time, therefore the results of every mediation are nonbinding and the outcome is a win-win situation. Moreover, mediation must not be confused with other forms of dispute resolution such as arbitration. Regarding the role of mediator, according to Ho Won Jeong, he should possess two important qualities: credibility and empathy. The former characteristic helps to gain the parties respect and their confidence, while the latter means to be able to create a positive mood with each of the disputants in order to understand properly their ideas, needs and feelings .

In addition, in his book called *Diplomacy: Theory and Practice*, Geoff R. Berridge basically distinguishes between different mediators with different degrees of leverage in the nowadays world. He also collects them into broad and various categories or, as he labels them, “tracks”. Consequently, there can be “Track One Mediation” when the mediator role is enacted by states. These entities becomes mediators for several different reasons: the desire to solve crisis and to pursue global stability , the will to enhance their international prestige , the duty to mediate in a conflict because an international organization (for instance the United Nations) has requested to do

so, the need to deescalate tensions within alliances . There can be also the case of state actors that have built a status of reliable negotiators, peacemakers and impartial mediators; for instance this can be the case of Norway or Qatar. eventually, it can be said that “Track One Mediation” often brings benefits to states that actively play the role of the mediator in dispute resolution. On the other hand, as Berridge affirms, there can be also a “Track Two Mediation” . In this case the mediator is not a state, but commonly an NGO or a private individual. For this reason the “Track Two Mediation” is often labeled also “citizen diplomacy” and it has developed a lot in recent years. This category of mediators is especially relevant in cases when it is necessary to deal with sub-state actors or even terrorist organizations. To sum up, the fundamentals of mediation could be divided in: the parties to a conflict, the mediator, the process of mediation and the context of mediation. This last fundamental of mediation is always analyzed prior to the mediation itself since it is necessary to proceed cautiously by firstly examining the nature of the dispute (if it is just a dispute or if it is a concrete war). Secondly, there should be an analysis on the issues at stake (for instance if it deals with a territorial dispute or trade dispute, etc.). Then it is important to examine the very nature of the parties involved (if they are state, sub-state entities, terrorist organizations, etc.) and finally, the last step, is to analyze the relationship between the parties involved (for example, if they have been considering each other as enemies for decades or if they are parties to the same alliance).

Regarding the process of mediation, there are several types of mediation that differ from each other in many ways. The main two of these types are: Neutral Mediation and Principle Mediation. In the former case, the mediator stays outside of the process as much as possible, therefore his role is similar to that of a simple facilitator. In the latter case, the mediator takes a much more intrusive role in the mediation. He communicates with each of the parties and each of the parties communicates with him while negotiating among them. He envisages and proposes solutions and options to the parties involved. The choice between the two mediation styles depends mostly upon the capabilities (military, economical, diplomatic, etc.) of the mediator. Moreover, there are other differences between Neutral and Principle mediation: Neutral Mediation concentrates much more on the interaction among the parties: it makes sure that the parties connect and talk to each other. Principle mediation is much more concentrated in the outcome of negotiation: the mediator wants to achieve a result more than concentrating on the relationship between the parties. Furthermore, Neutral mediation tries to create some empathy and mutual understanding among the parties by inviting the parties to put themselves in their counterpart’s shoes. On the other side, the Principle mediator is able to create incentives, mainly because it has his own capabilities.

Coming back to the role of the mediator, each mediator can adopt different strategies or styles in performing his tasks during the mediation process. By the way, three basic styles of mediation can be easily identified: facilitative mediation, formulative (or evaluative) mediation and manipulative mediation. By the way, these three styles of mediation are not unique and impenetrable, they merge with each other as the process of mediation is underway. In the facilitative mediation, the mediator fulfills the role of convincing the parties to communicate to each other. However, he adopts an integrative strategy of preparing the ground of negotiation and sometimes he even tries to define what should be the composition of the delegation, the venue , the documents to put on the table, the agenda to be discussed, when to start negotiations, etc. Furthermore, he can also help the parties “save face” since he can serve as a buffer while

maintaining the communication links opened. Therefore, facilitation means creating a climate of confidence where the parties are free to express their positions and also free to quarrel but in a very positive and constructive context. In this sense, the facilitator is oriented toward the management of the negotiation process rather than toward the final outcome. From this perspective, the facilitative mediation style is similar to the one outlined by two other scholars: Robert Bush and Joseph Folger. In their book *“The Promise of Mediation: The Transformative Approach to Conflict”*, they described the transformative style as a technique aimed merely at transforming the relationship between the disputants, not at reaching some sort of agreement.

The second style of mediation, the formulative one, is much more intrusive and involves not only the creation of the conditions for developing a dialogue, but also the direct participation of the mediator in finding a formula to reach an agreement between the parties. In this sense, the mediator does not wait for the parties to make proposals and to understand which is the common ground; he himself is involved in finding the solution and helps parties to save their face, meaning that no party should leave the negotiation with the perception of having been somehow defeated. Typically, the formulator writes the draft of the agreement and circulates it among the members of the different delegations. Indeed, firstly the mediator listens to parties' interests and needs and then he formulates serial drafts requesting the parties to criticize it until they agree on as many elements as possible. Eventually, the mediator can draft a final document in which he manages to combine all the points agreed upon during the mediation process. Only at this point the litigants have the choice to approve or not to approve the final draft. This *modus operandi* is also called the “one-text procedure” because the facilitator and the parties involved literally work on one text.

The third style of mediation is the manipulative mediation. Manipulation means that the mediator is so involved in the negotiation that he is drafting himself the final solution of the crisis. Consequently, what the mediator does is connected to his own capabilities. Through these, the mediator is able to reward the parties, to change their expectations, to modify their BATNA and therefore to expand the possible zone of agreement. In order to perform such acts, the mediator usually employs the leverage of sanctions or incentives aimed at modifying (increasing or lowering) the parties' BATNA. This is the main difference between this style of mediation and the formulative one: the formulator cannot put pressure on the disputants he only tries to find a solution and to convince the parties about the costs of non-negotiation, but he cannot put pressure on them.

At the end of a mediation there should be room for assessing it. This final evaluation, in its simplest form, can be based on two features: the containment of the crisis/conflict and the prevention of further clashes between the parties. However, other criteria for assessing a mediation can be added, for example if it helped to reach an agreement or if it served to improve the parties' relations, etc. In addition, apart from the real capacity of a mediator, other external variables that can affect the effectiveness of a mediation are: the parties desire and motivation to put an end to the conflict, their internal affairs, their internal decision-making process and their distribution of power.

From an historical point of view, the dispute over the final status of the territory began when Spain decided to abandon the two provinces of Segua El Hamra and Rio De Oro, which form Western Sahara, after several pressures by the international community. Indeed, until 1975, Western Sahara was part of the Spanish colonies and was named Spanish Sahara. Indeed, the crown of Madrid detained this territory since 1884 when, at the famous Berlin Conference, all the European

powers agreed upon the establishment of a Spanish protectorate over the territories of Segua El Hamra and Rio De Oro. After the Second World War and the establishment of the United Nations, Spain, as well as the other colonial countries such as France and Great Britain, found many difficulties in maintaining its colonies while surviving in a new international arena based on the ideals and principles dictated by the UN Charter, especially in Article 73 and Article 74. Since its founding, the United Nations promoted the development of forms of self-government in the territories administered by foreign countries enjoying a mandate on those territories. It has been estimated that, in 1945, almost one third of world population lived in those areas under trusteeship. As time went by, the process of decolonization continued and new states originated from trust territories. However, a new intervention by the UN was necessary in order to promote and to encourage this change. Therefore, the General Assembly adopted, on 14th December 1960, the Resolution 1514 known as the “Declaration on Decolonization” which contains several provisions in its paragraphs: *“The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation [...] Immediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or color, in order to enable them to enjoy complete independence and freedom”*.

However, even before UN Resolution 1514 was adopted, Morocco, one of the first African countries to have gained independence in 1956, began claim the regions of Segui El Hamra and Rio De Oro since they had been part of its pre-colonial expansion. This created several tensions between Morocco and Spain and only the rapid intervention of France avoided an harsh confrontation. . Moreover, King Hassan II also put pressure on Madrid by asking the United Nations to include the territory of Western Sahara in the list of Non-Self-Governing Territories. Eventually, Morocco obtained the insertion of this area in the list in 1963. However, Morocco was not the only country interested in Western Sahara, also Mauritania claimed the territory to be part of its national pre-colonial borders. The UN, in the meantime, continued to put pressure on Spain in order to decolonize Western Sahara, by adopting several resolutions, such as Resolution 2229 which reiterated basically the requests previously made in resolution 2072, but adding the invitation for Spain *“[...] to determine at the earliest possible date, in conformity with the aspirations of indigenous people of Spanish Sahara and in consultation with the Governments of Mauritania and Morocco and any other interested party, the procedures for the holding of a referendum under United Nations auspices with a view to enabling the indigenous population of the Territory to exercise freely its right to self-determination”*. Such resolution had different effects, most notably that of stimulating the born of civil society movements of protest which, at the beginning opted for peaceful demonstrations, but then shifted toward a more violent form of rebellion. Indeed, the Polisario Front was founded on May 10, 1973 with the name of “Popular Front for the Liberation of Saguia el-Hamra and Río de Oro” and started to fight against the Spanish rulers with the aim of achieving the total independence for Western Sahara. It had a linear and hierarchical structure with its apex in the person of the Secretary General, supported by a nine-member executive committee and then there were several different sections with specific political and military responsibilities.

As time went by, the guerrilla operations carried on by the Polisario Front proved the weakness of the Spanish army in years of political turbulence in Madrid. Indeed, General Francisco Franco's health conditions deteriorated quickly. In the meantime, from 1973 to 1975 the Polisario Front grew sharply in membership and improved a lot in terms of military capabilities and equipment. At the same time, Morocco and Mauritania increased the numbers of claims regarding Western Sahara. This escalation of pleas was also due to the fact that Spain announced in September 1973 that it would have granted territorial autonomy and (gradually) the right for self-determination to the Sahrawian people. Since, for the UN, these efforts by the Spanish Government to lessen its control over Western Sahara were not enough, in August 1974 Spain, after having delayed for years the organization of the referendum in Western Sahara (requested by the UN Resolution 2229), promised to hold it in the first months of 1975. In this perspective, a census was conducted in order to identify who had the right to vote for this referendum. Since the very nature of Saharawi people was nomadic and thus the majority of them lived in tribes with no stable settlement, Spain had some difficulties in conducting this census. Eventually, it resulted that 95,058 individuals were granted the voting rights.

Morocco, which was always in favor of this referendum, changed its position when it realized that Sahrawians would be asked to choose between independence or not and not between being ruled by Spain or by Morocco. Therefore, in September 1974 king Hassan II decided to invoke the intervention of the International Court of Justice, but only with an advisory proceeding, so ending with non-binding decisions. Few months later, the United Nations decided, in May 1975, to send an investigation team to gather information on what was exactly going on in that area and on how to determine the rightfulness of territorial claims by all the countries interested. The inquiry concluded that the Polisario Front was not a terrorist organization, but a liberation movement. More important: the mission realized that the Sahrawians were strongly in favor of independence, while few were those favorable to be administered either by Spain, Morocco or Mauritania.

Furthermore, the UN mission report, published on 15th October 1975, was useful also to the International Court of Justice for its pronouncement, which was published one day later. In its opinion, the ICJ affirmed that, even though Morocco and Mauritania had historical links with the territory of Western Sahara, those links were not sufficient in order to grant the sovereignty rights over that territory. After the publication of this opinion by the International Court of Justice, the countries involved reacted differently to the decision. For instance: Spain welcomed it very well, Mauritania regarded it as quite positive, while Morocco only acknowledged the first part of the decision (which affirmed the ties between Morocco and Western Sahara). Indeed, in the very same day the International Court of Justice published its opinion, king Hassan II ordered the mobilization of the army near the border with Western Sahara and later announced the organization of a peaceful march through it. Spain affirmed its willingness to defend its possessions in Western Sahara and asked the United Nations Security Council to block the Moroccan initiative. However, since Morocco was strongly convinced of its action and Madrid was resolute, the tension in the Western Sahara scenario reached unprecedented levels. Consequently, the UN Security Council was urgently convened and adopted two resolutions, the first one (Resolution 379 on 2nd November) asking the parties to avoid unilateral actions which may escalate tension in the area, the second one (Resolution 380 on 6th November) deploring the march and requesting Morocco to immediately withdraw from the action.

By the way, king Hassan II did not back up and on 6th November 1975 hundreds of Moroccans crossed the border with Western Sahara backed by the Royal Moroccan Army. Polisario Front tried to block the invasion but its members were too few for countering the huge amount of Moroccans taking part in the so-called Green March. On the other side, Spain did not counteract, even though local Spanish authorities were willing to do so. However, in Madrid things went bad when Francisco Franco got ill and suffered from heart attacks until he went into coma and died on 20th November 1975. In a time of political turmoil in their homeland, Spaniards in Western Sahara remained for weeks without any clear order on what to do. In the weeks prior to Franco's death, the new king Juan Carlos and the President of the Council of Ministers Arias Navarro acknowledged that a conflict would have had disastrous consequences for the country, hence they opted for a cautious diplomatic strategy. Therefore, in a few days, Morocco started secret negotiations with Madrid (with the participation also of Mauritania). In the meantime, the Spanish Foreign Legion operating in Western Sahara and the Spanish police began a round of arrests of local supporters of Sahrawi independence, while the Spanish government, under the threat of Moroccan claims over the cities of Ceuta and Melilla, set up the Operación Golondrina, namely the evacuation plan from Western Sahara. The departure of Spaniards from Saguia El Hamra and Rio De Oro started very soon and was carried on orderly so that by mid-November 1975 almost no Spaniard had remained.

On 14th November 1975 Carlos Arrias Navarro (Spain), Ahmed Osman (Prime Minister of Morocco) and Hamdi Ould Mouknass (Foreign Affairs Minister of Mauritania) signed the Madrid Accords, expiring Spain's presence in Western Sahara. Thus, Morocco and Algeria basically occupied the previously known Spanish Sahara and split it in two. Obviously the Madrid Accords had been quickly denounced by the Polisario Front, which started very soon its own conflict against Morocco and Mauritania, helped also by Algeria. The reasons for this assistance are many: first of all an economic reason, namely the fact that Algeria wanted the possibility to easily reach the Atlantic Ocean in order to trade iron from the Tindouf mines. Secondly, there was also an historical-political reason: since 1963, because of the so-called "Sand War", Algeria and Morocco had been arch enemies and their bilateral relations were already put in jeopardy. On 27th February 1976, Spain formally announced the complete decolonization of what was previously known as Spanish Sahara, even though all the Spaniards had flown by the end of 1975. The very same day the Polisario Front officially declared the establishment of the Sahara Arab Democratic Republic (SADR).

The guerrilla operations carried on by the Polisario Front against Morocco and Mauritania managed to push Mauritania into peace negotiations with the liberation movement. Indeed, the poor economic conditions of the country added with a period of ethnical turmoil, forced the Mauritanian government to sign a peace agreement with the Polisario Front on 5th August 1979 in Algiers. As a response, Morocco's king Hassan II opted for the takeover of Mauritanian territory in Western Sahara: Morocco, as a result, held the entire Western Sahara. In the following years the Polisario Front continued to attack Moroccan garrisons and economic capacities in Western Sahara as well as Southern Morocco towns, while the Moroccan government reinforced more and more its presence in Saguia El-Hamra and Rio de Oro by encouraging southward migration of Moroccans to Western Sara and by starting the construction of a huge wall separating the Morocco-controlled areas (called Southern Provinces) from the more desert areas controlled by the Polisario Front. During the 1980s the Western Sahara War experienced an impasse since Morocco was focused on securing its borders

by erecting the berm and by promoting resettlement of Moroccans into the Southern Provinces. However, the international community did not remain passive: from 1986 the UN Secretary-General Javier Pérez de Cuéllar, in collaboration with the OAU, began a process of good offices aimed at finding a just and definitive solution to the question of Western Sahara. This process ended up with the drafting of the “Settlement Proposals”, a document to be submitted to both Morocco and Polisario Front in order to solve the conflict.

Eventually, the Settlement Plan had been accepted by both parties in the conflict on 30th August 1988, resulting in a ceasefire (that is still in place today) and the preparation of a referendum to allow the people of Western Sahara to decide whether to become part of Morocco or an independent state. The idea to hold such a vote was then embodied in the UN Security Council Resolution 621. A year after, on 29 April 1991, the Security Council approved another resolution (690) by which it basically established the United Nations Mission for the Referendum in Western Sahara (MINURSO). Therefore, by the end of summer 1991 a ceasefire was in place and the MINURSO was established. This peacekeeping mission had, as its primary function the continue verification of the ceasefire. However, soon tensions broke out with regard to the question about who was entitled to vote in the referendum: on one hand, the SADR and the Polisario Front wanted a referendum based upon the Spanish census of 1974, on the other hand, Morocco wanted that every citizens who was living in Western Sahara should have been granted the right to vote. To this end, king Hassan II strongly encouraged poor Moroccans to resettle in the Southern Provinces.

On 18th May 1997 the former US Secretary of State, James A. Baker was appointed UN Secretary-General Personal Envoy to Western Sahara with the duty to conduct the negotiations between Morocco and the Polisario Front. He commenced his mandate with a visiting mission to Western Sahara region from 23 to 28 April 1997. In that occasion he realized that both parties, despite being still unyielding on their positions, were determined on maintaining the Settlement Plan and even on implementing it. In June 1997 the UN Secretary-General asked the two disputants, as well as the neighboring countries, to send their representatives to a first separate meeting with his Personal Envoy James Baker, in order to set the rules for subsequent direct talks. This meeting was held on 10 and 11 June 1997 in London. On that occasion the discussion regarded the rules of the future talks that would have been held in Lisbon on June 23. Everybody agreed that there would have been a private consultation, not an international conference, and it would continue since Mr. Baker believed it was necessary. Algeria and Mauritania would have been observers, but would participate in the talks only if the discussion would have regarded issues directly affecting them. In that occasion the new mediator James Baker, maybe because he was dealing with Western Sahara only for few months or maybe because those were separate indirect talks with representatives of the parties, began his work being still more a facilitative rather than a formulative mediator. However, a formulative strategy can already be seen as it was specified in an excerpt of the UN Secretary-General Report S/1997/742: *“My Personal Envoy further explained to the parties that, during the direct talks, he would make suggestions and offer ideas to facilitate their work, including proposals for bridging their differences to try to eliminate deadlocks”*. The Lisbon meeting of 23rd of June 1997 was the first official direct meeting between all the parties involved in the London talks. However, the discussion got stuck on the issue of Saharan voters identification. Soon afterward, talks were resumed on 19-20 July again in London, where finally the parties managed to reach an agreement on the issue of identification; however, they agreed also on the fact that they would not

have been compelled to “*actively prevent*” anyone from those tribes from applying for identification.

Nonetheless, a final issue to be tackled was the adoption of a code of conduct for the referendum campaign, but Morocco was not really keen on discussing about how to behave during the referendum campaign. Consequently, the talks on that issue were postponed to a new round of negotiation to be held in Houston from 14 to 16 September 1997. In those September days, at the Baker Institute for Public Policy in Houston, the talks developed under the auspices of the UN, Mauritania and Algeria. At the end of the negotiation, Morocco and the Polisario Front reached agreement on the adoption of a Code of Conduct to respect during the referendum campaign. Particularly, as can also be seen from the final document of the Houston Accords, the entire Code of Conduct signed in Houston was previously drafted as a real formulator by the UN Special Envoy James Baker.

In any case, the identification process resumed at the end of 1997. Soon problems arose: Moroccan government was helping individuals from contested tribal groupings to apply for obtaining the voting rights in order to take part in the referendum. Shortly after the Identification Commission got blocked by the huge amount (almost 65,000) of applications received from individuals from contested tribes. In order to unravel the knot, in 1998 James Baker, who previously helped to solve the issue of East Timor autonomy, secretly visited King Hassan II of Morocco. The Special Envoy wanted to investigate whether Morocco was still convinced that the provisions of the Settlement Plan and that the holding of the referendum were the best solutions for Morocco’s political legitimization in Western Sahara. Trying to solve another impasse, the UN Secretary-General presented to the parties a “package” of measures that included four protocols: one regarding the identification of applicants from contested groupings, one on appeals process, another protocol on refugee repatriation, and a final protocol regarding the situation in the territory during the transitional period. This “package” was supposed to be agreed upon by the parties by mid-November 1998 and represented an attempt to speed-up the referendum process, putting pressure on Moroccan government in order also to block its tactic of delaying the identification process. However, only by mid-1999 the disputants officially an amended version of such “package” of protocols. In addition, the very long process of adoption of those protocols represented the rejection of the “Houston spirit”, that in turn marked the maintenance of the Settlement Plan provisions.

Consequently, the Secretary-General decided to ask his Personal Envoy James Baker to start negotiations with the disputants in order to solve the dispute by exploring new means or ways. In this atmosphere there happened the development of the so-called “third option”, namely a political solution directly proposed by the UN (actively sponsored by France, the United States, Russia, the United Kingdom) to be submitted to the parties as a possible compromise to be agreed on. Therefore, after several meetings in 2000, Baker managed to convince the parties to discuss a political solution for their dispute over Western Sahara. In his view, both the two extreme options (Western Sahara’s integration with Morocco or independence) were impossible to be agreed upon, therefore the necessity of a “third option”, a political solution, was necessary. Furthermore, he also reassured the parties that, since the rule of “nothing is agreed until everything is agreed”, a possible kind of solution would not have impaired their positions, helping them to save face. In particular this is one of the most important feature of the formulative mediation.

Therefore, as the formulative mediator he was, he drafted the later called *Framework Agreement on the Status of Western Sahara*, famously known as the “Baker Plan”. The document, which was merely a draft, foresaw the total integration of Western Sahara into Morocco territory, even though the legislative, executive and judicial powers on matters regarding local administration remained in the hands of Western Sahara population. Morocco would have maintained exclusive powers with regards to foreign relations, national security and external borders. In addition, Baker proposed that this arrangement would have been subject to popular expression. In this sense, a referendum would have been organized within five years following the implementation of this Baker Plan. Moreover, the Security Council adopted Resolution 1359 (2001) in which it took into consideration the UN Secretary General Report on the situation concerning Western Sahara (UN doc. S/2001/613) with its annexes and encouraged “*the parties to discuss the draft Framework Agreement*”. Anyway, shortly after Baker presented such plan to the parties on 5 May, they rejected it by the end of 2001 after several rounds of inconclusive talks. Actually, Morocco was a bit favorable to such plan, but Polisario (and Algeria) strongly opposed it since it contemplated a period of autonomy under Moroccan rule. Thus, that was a problem of lack of confidence.

As a consequence, in July 2002, the Security Council came out with Resolution 1429 (2002), which invited Baker to find another political solution for the Western Sahara dispute. The UN Secretary-General Personal Envoy spent the rest of the year working of such new solution and in January 2003 he officially visited the region where he met Moroccan and Polisario representatives in order to present them this new proposal entitled *Peace plan for self-determination for the people of Western Sahara* and soon called the second Baker Plan. This new political solution was thought not to disappoint anyone, even though Baker knew that nobody would have been completely satisfied by this proposal that, in his mind, was quite reasonable for both the parties. He tried to give each disputant an equitable chance to gain the majority of the votes in a referendum on self-determination after a period of self-government (autonomy). Even though the very basis was the same, this new draft Peace Plan was more specific than the Framework Agreement in two main aspects: firstly, the voters for the referendum for the final status of Western Sahara would have been those on the UN list of provisional voters, those on the repatriation list, plus those who have been continuous residents in the territory since the end of 1999 and, secondly, the fact that when Baker presented to the parties this new document he presented it on a nonnegotiable basis, instead when he presented the Framework Agreement he asked Morocco and Polisario (but also Algeria and Mauritania) for changes. Consequently, in May 2003, after having received the document and having studied it, the disputants, together with Algeria and Mauritania, submitted to Baker their considerations and their acceptance or denial to the Peace Plan. While Algeria was in favor of it, Polisario and Morocco rejected that plan: in particular Morocco was even against the idea of including independence as an option in the referendum on the final status of the territory. In this sense, Kofi Annan intervened by including a third ballot option between that of integration and that of independence, namely the continuation of autonomy. However, eventually Morocco and the Polisario Front confirmed their rejection of such solution. Baker therefore, asked the Security Council to take a strong position in favor of such plan, but the Council did not respond positively with its Resolution 1495 (2003).

As a consequence the whole situation stalemated and eventually the UN Secretary-General Personal Envoy James Baker resigned on June 1, 2004. During his mandate he acted as a real

formulator by drafting the two Baker Plans, but he proved to have been a great facilitative mediator by managing to convince the parties to sign the Houston Agreements in 1997. However, Baker's efforts had failed because of external variables (for instance the lack of concrete support by the UN Security Council) and mainly because the parties were not enough motivated to put an end to the conflict.

After James A. Baker, the new UN Secretary-General Personal Envoy for Western Sahara was found in the person of the Dutch diplomat Peter van Walsum, who took office on 25 July 2005. In the following months, van Walsum prepared the ground for his mediation between a reticent Polisario Front, eager to adopt and implement the Peace Plan, and Morocco, whose position was still of a refusal of the plan since it contemplated the possibility of a Saharan independence. Van Walsum, then, inherited a really complex situation and a difficult political context since the "War on Terror" was at its peak. In addition, when van Walsum took office the "Independence Intifada" was in place. This uprising began earlier in May 2005 and lasted until the end of the year. It was characterized by a series of riots and demonstrations in the Moroccan part of Western Sahara, beginning from El Aaiun. The Polisario Front and pro-independence organizations denounced Morocco's violent repression of such demonstrations. The new Personal Envoy of Kofi Annan visited for the first time Western Sahara between October 11 and 17 in order to consult separately with the parties in two face-to-face meetings. In this occasion Morocco reaffirmed that it would contemplate only negotiations that regarded autonomy for Western Sahara and that it would have not considered independence as a ballot option in a possible referendum. On the other side, the Polisario Front reiterated its will to consider only negotiations with the Peace Plan or the UN Settlement Plan at the center of discussion. A couple of weeks later, during the ceremony for the thirtieth anniversary of the Green March, king Muhammad VI made an eloquent speech announcing that Morocco would have undergone an internal debate over Western Sahara possible autonomy. After this national dialogue would have been completed, Morocco would have presented its proposal for Western Sahara autonomy to the United Nations. Furthermore, three months after van Walsum's briefing to the UN Security Council, King Muhammad VI decided to reestablish the Royal Advisory Council for Saharan Affairs (CORCAS) with the aim of helping the government with the issue of Western Sahara. This advisory council was also responsible for drafting the autonomy proposal to present to the United Nations as soon as possible.

During that phase, it can be said that van Walsum showed a more facilitative approach of mediation, trying to put both parties in the best conditions to negotiate and reach an agreement. The reasons under this choice were various: first of all the Moroccan inflexibility, secondly, the Security Council unwillingness to impose a solution to either party (especially Morocco), thirdly, Baker's failures with his two plans and finally the mutated context in Western Sahara, with all the demonstrations and riots that broke out during 2005. Throughout the year 2006 the UN Secretary-general Personal Envoy paid several visits to Western Sahara and met with the parties in various occasions. During these meetings the UN Secretary-General Personal Envoy presented the parties with two extreme options: to maintain the stalemate or to engage in new negotiations. Consequently, while Morocco pushed for direct talks, the Polisario Front affirmed that it wanted to preserve the status quo. Furthermore, since van Walsum's approach consisted in pushing for direct talks between the disputants, he reassured the parties about the fact that these discussion would have been held without preconditions.

On 10 April 2007, the Polisario Front presented to the UN Secretary-General its “*Proposal of the Frente Polisario for a mutually acceptable political solution that provides for the self-determination of the people of Western Sahara*”. The liberation movement stressed the fact that the whole dispute was an issue of decolonization between Morocco (the colonizer) and the Polisario Front. This fact meant, according to the Polisario Front, that the final objective should have been that of organizing the well-known referendum on self-determination with the same ballot options foreseen by the two Baker Plans, namely: independence, integration into Morocco’s territory or the continuation of self-government. The following day, April 11, 2007, the Moroccan government submitted its autonomy proposal, entitled “*Moroccan Initiative for Negotiating an Autonomy Statute for the Sahara Region*” to the UN Secretary-General and his Personal Envoy. According to this plan, the Sahrawi people would have simply governed locally (actually the King and a Moroccan representative would have maintained the ultimate decision-making powers over almost every initiative of the local government) under Moroccan sovereignty, with Rabat controlling exclusively foreign affairs and the defense sector, while . Moreover, Morocco warned the United Nations that if that proposal had not passed then Islamic terrorism would have spread around the two regions of Maghreb and Sahel.

Since the Polisario Front would have never accepted the Moroccan proposal, the new UN Secretary-General Ban Ki-Moon made a recommendation to the UN Security Council, namely the need to call upon the parties to enter into negotiations without preconditions. Quite surprisingly, on 30 April 2007, the UN Security Council adopted Resolution 1754 (2007) by which it embraced Ban Ki-Moon’s recommendation and consequently called upon Morocco and the Polisario Front to engage in such negotiations without preconditions with the aim of providing self-determination for the Western Sahara’s population. This act adopted by the UN Security Council represented a true victory for van Walsum who, almost since the beginning of his mandate, advocated for the launch of such kind of direct negotiations. As a consequence, van Walsum (in accordance with Ban Ki-Moon) convened the parties at the Greentree Estate in Manhasset (New York) on June 18 and 19. This was the first time since the beginning of the century that Morocco and Polisario met in face-to-face talks.

Anyway, during the negotiations, the UN Secretary-General Personal Envoy demonstrated to be a real facilitator as can be seen also in Ban Ki-Moon’s report of June 29, 2007: “*In facilitating the negotiations, my Personal Envoy asked for an open and frank but nonetheless respectful discussion*”. In this sense, it can be even argued that van Walsum adopted a transformative mediation style: a technique aimed merely at transforming (positively) the relationship between the disputants, not at reaching some sort of agreement. However, although having contributed to the creation of a positive mood between the disputants, the meeting in Manhasset was unsuccessful since it did not provide any positive step towards the resolution of the Western Sahara dispute. Both Morocco and the Polisario Front merely agreed to engage in further negotiations to be held in the second week of August 2007.

As agreed upon during the first round of negotiations in Manhasset, the parties met again on 10 and 11 August 2007. Unfortunately, even this second round of talks constituted another unsuccessful meeting since the disputants kept their respective rigid positions and engaged only in technical (and non-controversial) issues, regarding confidence-building measures and natural resources, added by van Walsum to the agenda. As a consequence, in order to solve the impasse of

a static negotiation, van Walsum decided to use the principle of “nothing is agreed until everything is agreed”, believing that the parties could have discussed proposals that otherwise they would have not. However, they only agreed to convene another round of talks.

A new round of negotiations was set up by Ban Ki-Moon and Peter van Walsum on 8 and 9 January 2008 always in Manhasset. Despite the call to show political will and to engage in substantive negotiations, the parties seemed not to be interested very much in doing so. Van Walsum tried as best as he could to safeguard the success of the discussion: he managed to keep the parties at the table and he set the agenda including several technical issues to be discussed, but the parties remained static on their respective positions.

Since no progress had been made even during a fourth round of talks (16 to 18 March 2008), van Walsum decided to disclose his personal disappointment about the stalemate in several interviews (but also during his briefing to the Security Council) in which he affirmed that Western Sahara’s independence was basically unrealistic and that the UN Security Council was unwilling to impose any solution to the parties because of French and American opposition. Those expression triggered the Polisario Front reaction: indeed, it declared to have no more confidence in the work of the UN Secretary-General Personal Envoy. As a consequence, his mandate was not renewed in the summer of 2008. In general, it can be said that van Walsum’s era had been characterized by the use of a facilitative mediation style due to four relevant reasons: the growing Moroccan inflexibility, the Security Council’s unwillingness to impose a solution to either party, Baker’s failures and finally the mutated context in Western Sahara. In addition, few footprints of a transformative mediation style can be found.

Few months later, in order to pursuing the negotiation process, a new American diplomat was appointed as the UN Secretary-General Personal Envoy for Western Sahara: indeed, on January 14, 2009, Christopher Ross took office. Soon, he undertook his first official visit to the region in order to discuss with each party separately. He did so in order to explore new ways to reach a more substantive and in-depth negotiation between Morocco and the Polisario Front. Moreover, he wanted also to detect if any of the two disputants was willing to change its own position, but unsurprisingly both remained rigid. Anyway, after having consulted with the parties, Ross decided that further direct negotiations between the parties would have been necessary. However, before convening for an hypothetical fifth round of talks, a preparatory (informal) summit was needed in order to guarantee a positive outcome for the future round of negotiations. He then proposed such approach to the parties which agreed immediately. The venue for the informal meeting was found in Austria. There, the parties, together with Ross and observers from other countries, met in Dürnstein on August 9 and 10. Ross managed to build a new spirit of cooperation by adopting a mere facilitative style of mediation aimed precisely at crumbling the rigid confrontation developed during the last Manhasset rounds.

On the wake of this informal ensemble, in September 2009, after a meeting of the General Assembly, Morocco surprisingly revealed to the UN Secretary-General that it was ready to discuss the proposal that its counterpart had presented to the UN Security Council in April 2007. Following this overture by Morocco, Ross wanted to seize the moment, but at the same time he believed that it was too early to convene a formal round of discussion. Consequently he decided, in concert with the Polisario Front and Morocco, to hold another informal summit which was scheduled for the last

days of November. However, from October until the end of 2009 tensions broke out between the parties with several demonstrations and protests, organized by Polisario, been repressed violently by the Moroccan administration; therefore tension rose again.

On 10 and 11 February 2010 Ross was able to convene with Morocco and the Polisario Front in Armonk, New York for the second informal preliminary meeting. In that occasion the liberation movement asked the United Nations to monitor possible human rights violations perpetuated by Morocco, which in turn reject all allegations and opposed this request by the Polisario Front. The Moroccan delegation affirmed that Polisario pushed for humanitarian issues because it did not want to focus on core political issues related to self-determination and the referendum. After that exchange, the discussion focused on each party proposal presented to the UN Security Council four years earlier in April 2007. They examined the respective plans, but, as the UN Secretary-General Personal Envoy pointed out: *“neither party had accepted the proposal of the other as the sole basis of future negotiations”*. Therefore, the discussion stalled again.

During that phase of his mandate, Ross demonstrated his great facilitative skills, trying to connect the parties with each other. However, this mediation style was not aimed merely at changing their relation (as it is the case of a transformative mediation style), but also at reducing their BATNAs, trying to guide them towards a negotiated agreement that should have been found only thanks to their own efforts. In addition, he undertook several visits to the region and to the capitals of the most influential countries within the UN Security Council, with particular attention to the so-called “Group of Friends”. As a consequence, he went to Moscow, Paris, London, Washington and Madrid in order to secure a continuing support for the approach he had decided to follow. However, since nobody tried to move beyond the stalemate generated after the turbulent Fall 2009, the UN Secretary-General Personal Envoy gave the parties some time in order to reflect and to gather new ideas to present at a new informal meeting to be set up. Notwithstanding, few weeks later, on 9 October 2010, tensions erupted again in the territory of Western Sahara when a group of Sahrawi people gathered 15 kilometers out from El Aaiun, in Gdeim Izik, and organized a sort of “protest camp” by establishing themselves in tents. The aim of such demonstration was to demand a more humane treatment for the Sahrawi people who lived under Moroccan rule. This protest, quite atypical with respect to the previous ones, created some embarrassment in the Moroccan authorities which, despite the efforts of the UN Secretary-General Personal Envoy, consequently decided to forcefully burst into the camp on November 8. However, in that tense atmosphere the Polisario Front and Morocco convened for the third informal meeting between the parties from 8 to 10 November in Long Island, New York. Trying to solve the stalemate, Ross pushed directly for focusing on the two plans presented by the parties in April 2007. As it was clear since the beginning of the round, neither the Polisario Front nor Morocco accepted their counterpart’s proposal as the basis for further talks. The parties, instead, agreed on holding a particular round of talks in Geneva on 9 February 2011 regarding confidence-building measures; in that occasion, they expressed their commitment to facilitate more and more the Sahrawi families, who had been separated, to restore a sort of connection by allowing increasingly family visits through the Berm and to expand the number of people included in that program.

After these meetings, Ross continued his work of facilitation by setting up other round of talks (he have organized nine informal meetings between 2009 and 2012) and by visiting several times Rabat, Tindouf, Algiers and the capitals of the “Group of Friends”. Disappointingly, even

though all the actors involved committed themselves to support his work, he noticed that the process of negotiation did not advance. Therefore, he decided, in consultation with the parties, to change his approach, while maintaining his mediation style as a real facilitator.

This new approach was characterized by bilateral consultations with the Polisario Front and Morocco, but also with the neighboring States, in order to examine whether they were ready (and flexible enough) to discuss the features of a solution, keeping in mind that it would have been a compromise. In order to do so, Ross had to engage “shuttle diplomacy”, a technique in which the mediator works as an intermediary that basically goes back and forth from one party to the another delivering messages between the disputants. As a consequence, from 2013 onwards, he visited many times the territory of Western Sahara, going back and forth from Rabat to Tindouf and vice versa. He also developed contacts with segments of Sahrawi civil society in order to directly include part of the Sahrawi people in the negotiation. However, Ross discovered, with a bit of surprise, that it was impossible to determine whether there were more people in favor of Western Sahara independence or in favor of Western Sahara autonomy under Moroccan rule. Many, indeed, believed that neither side of the dispute represented rightly the Sahrawi people, whose main concerns regarded: their active role in the discussions, the continuation of family reunifications, the exploitation of Western Sahara’s resources (from a legal point of view), the preservation of their cultural identity and the exploration of new ways to funnel international aid into the territory. In addition, Ross asked the parties to build up two small working groups that would have worked with him in order to go more in-depth in the negotiation of substantive issues. He also presented several questions to these two working groups, but he obtained nothing except the reiteration of each party’s position.

In the last months of 2015, Christopher Ross continued his work of shuttle diplomacy, but he had the aim of exploring the possibilities to resume face-to-face negotiation between the parties. He, then, visited Rabat where the Moroccan authorities introduced two of the key elements of Morocco’s position as ideas to be examined by the other party: firstly the inclusion of Algeria as a formal part in the negotiations and secondly the Moroccan view of self-determination. The Moroccan authorities, therefore, wanted Ross to explore such issues with the Polisario Front (and the neighboring states) in a fruitful exchange of views done through shuttle diplomacy. However, as soon as such ideas were presented to the Polisario’s officials, they rejected any kind of discussion since, according to them, Morocco was only trying to delay and reshape the negotiation process. Furthermore, Algeria refused to enter formally into the discussion as a real party and labeled the Moroccan idea as a mere attempt to “bilateralize” the whole dispute.

In June 2016, Ross continued his work of shuttle diplomacy by consulting the parties and the neighboring states on the possibility to resume face-to-face talks, but he faced the growing opposition of the Moroccan government. Moreover, Morocco did not seem very enthusiast about having the UN Secretary-General Personal Envoy visiting the region, but this was mainly due to the holding of general elections in the country on October 7, 2016. By that time, however, Morocco have already shown its uneasiness with the work of Christopher Ross and the fact that King Muhammad VI did not have time to meet with him was a signal of Morocco’s impatience. The tension culminated with a resignation letter, sent by Ross on 23 January 2017 and (the day after) with another letter sent by Morocco to the new UN Secretary-General, affirming that his Personal Envoy was no more welcomed in the kingdom. Another relevant event that hampered Ross’

involvement in 2016 was the worsening of the already bad relations between Morocco and the Polisario Front. Indeed, started on August 14, the intense confrontation over the small strip of land near Guerguerat saw the risk of a collapse in the ceasefire signed in 1991 by the parties. The confrontation regarded the building of a road linking the Moroccan controlled territory with Mauritania and passing however through the UN buffer strip. The Polisario Front responded by deploying its troops close to those of Morocco's Royal Gendarmerie. The confrontation, with the help of MINURSO and that of Antonio Guterres, ended when Morocco decided to withdraw its troops on 26 February 2018. Anyway, the UN Secretary-General eventually accepted Ross' resignation at the end of April 2017 and, on 16 August 2017, appointed the former President of Germany Mr. Horst Köhler as the new UN Secretary-General Personal Envoy for Western Sahara.

In conclusion, the mandate of Christopher Ross was characterized by his use of a facilitative mediation strategy which had been carried on following two different approaches that can ideally divide Ross' era in two phases. The first one goes from his appointment in 2009 to the beginning of 2013 when he set up of several informal talks with Morocco, the Polisario Front and the neighboring countries. Those preliminary meetings were aimed at setting the stage for the resumption of formal talks, but Morocco's opposition to further formal discussions had been detrimental. The second phase of Ross' mandate coincided with a change in his approach by holding small bilateral consultations between him and the parties along with the use of shuttle diplomacy. However, as it has been said before, even if he changed his approach, his mediation style remained that of a facilitator. Anyway, even during Ross' era some external events had a strong influence on the dispute and on the way the parties discussed. In particular, the security concerns played a key role in shaping the activity of the UN Secretary-General Personal Envoy, forcing him to put pressure on Morocco and Polisario Front. That of Western Sahara, indeed, has been a regional dispute that could have been subject to spillover effects from different events, for instance the Arab Spring or the War in the near Mali. In addition to external events, the work of Christopher Ross has been also impaired by internal factors such as the parties' unwillingness to proceed in further rounds of direct talks or their last military confrontation near Guerguerat.

In conclusion, even though they have differed a lot in terms of the mediation style adopted, no one of these three mediators (James A. Baker, Peter van Walsum and Christopher Ross) have managed to solve the dispute over the final status of Western Sahara. After all, a mediation is effective when the parties are committed to negotiate in order to find a mutually acceptable solution. As long as Morocco and the Polisario Front remain firm on their respective positions, unwilling to recognize the need to adopt the principle of *quid pro quo*, the issue of Western Sahara will remain open and unsolved.