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Viewpoints are a moderated dialogue between experts expressing opposing or differing opinions on a topic of contemporary relevance

Western Sahara

Western Sahara (formerly Spanish Sahara) is the territory in northwestern Africa between Morocco and Mauritania bordering the Atlantic Ocean. The territory is also host to Africa's longest-running territorial dispute. In April 2007, Morocco presented an autonomy plan for the territory to the United Nations. On the first anniversary of the proposal, this issue of *Viewpoints* critically examines the plan and its prospects for success.

Jacques Roussellier, an Adjunct Scholar at the Middle East Institute, serves as moderator of this discussion in his piece, "How Autonomous is Autonomy? The Western Sahara Dispute in a Bind." Several experts on the subject have provided thoughtful, incisive analyses of this crucial conflict as discussants. These include Robert Holley of the Moroccan American Center for Policy ("Meeting International Norms for Self-Determination through Autonomy"); James N. Sater of Al Akhawayn University ("Morocco's Autonomy Proposal"); and Stephen Zunes of the University of San Francisco ("Western Sahara: Self-Determination and International Law").



Western Sahara: Fast Facts

Area: 266,000 square kilometers, about the size of Colorado

Arable Land: 0.02%

Population: 382,617 (2007 estimate)

Age Structure: 0-14 years old: 45.4%
15-64 years old: 52.3%
65 years old or more: 2.3%

Ethnic Groups: Arab and Berber

Religion: Islam

Source: CIA World Fact Book



How Autonomous Is Autonomy? The Western Sahara Dispute in a Bind *Jacques Roussellier, Middle East Institute*

The ongoing negotiations between Morocco and the Algeria-backed Polisario Front regarding the future status of the disputed Western Sahara territory have yet to demonstrate that a seemingly elusive settlement could be a realistic, if distant prospect. With Morocco on the one hand supporting autonomy for the territory within its international border, and Polisario on the other hand advocating the resumption of the stalled UN process leading to a self-determination referendum, the search for a common ground looks to be a near-impossible task. Though autonomy in the abstract world (sometimes intersecting with Washington's short attention span) seems a perfect fit for an international dispute pitting pro-independence and pro-annexation camps, in the volatile North African context, which sets the dispute in complex parameters, reconciling these two opposites seems a stretch. Yet, the debate about the virtues of each position is worth an exercise in clarifying what's behind and what's beyond such eloquent re-statements of interests and objectives.



At the heart of the dispute over the status of the Western Sahara region lay differing characterizations that frame the conflict in stark contrast and with clashing outcomes. First, as for the concept of self-determination, the divisive issues of defining who the people of Western Sahara are and who should take part in a final vote on the political status of the territory is unavoidable. To assume broad consensus — that the majority of Western Sahara's inhabitants favor independence — will render any Moroccan proposal for autonomy null and void at the outset, because there is no chance that a popular vote in Western Sahara will endorse an autonomy plan. The UN decolonization rules that apply to the Western Sahara case provide for several options, including integration with a sovereign independent state on condition that a high degree of self-government is guaranteed. Hence, autonomy, far from being as such a denial of international justice, is a condition for the realization of self-determination in the case of territorial integration.

Western Sahara: Key Dates

1884: Western Sahara is colonized by Spain, becoming a Spanish province in 1934.

1973: The Polisario Front is established as the sole representative of the Sahrawis.

1975: Morocco brings its claim to Western Sahara to the International Court of Justice (ICJ). The ICJ rules that the Sahrawis have a right to self-determination, and a referendum is organized by Spain. Under the aegis of King Hassan II, the "Green March" of over 300,000 unarmed Moroccans into Western Sahara takes place, prompting Spain to end its control of the territory, which is then transferred to Morocco and Mauritania by the Madrid Agreement.

1976: The Polisario Front declares the Saharan Arab Democratic Republic (SADR), backed by Algeria and Libya. A guerilla war between the Polisario Front and Morocco begins, lasting until 1991.

1978: Mauritania signs a peace deal with the Polisario Front and renounces its claims to Western Sahara.

1991: In April, the UN Security Council passes Resolution 690, creating the United Nations Mission for a Referendum in Western Sahara (Minurso). The UN brokers a ceasefire in September, to be monitored by Minurso.

2001: UN Special Envoy James Baker submits a "Framework Agreement" to the UN for resolving the conflict, which is rejected by the Polisario Front and Algeria.

2003: Baker presents the "Peace Plan for the Self-Determination of the People of Western Sahara," a new plan to end the conflict, which is rejected by Morocco.

2007: In April, Morocco presents its first official autonomy proposal for Western Sahara. In June, Morocco and the Polisario Front start negotiations on a mutually acceptable solution.



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However, autonomy cannot be considered as a self-contained principle in the settlement of international disputes, but rather at best as a pragmatic or aspirational tool. To revisit the intractable contradiction between self-determination and territorial integrity is neither helpful nor relevant. The Western Sahara remains a matter of decolonization, for which only a self-determination process, as defined and validated by the international community, can provide an acceptable outcome. Besides, the principle of autonomy cannot subsume by itself the self-determination/territorial integrity dichotomy. Not only is there a shaky ground for the recognition of autonomy as a principle of international law (which self-determination is), if there is any at all, it is in relation to territorial minorities, and in particular, indigenous peoples. In such a context, the right to self-determination can be equated with autonomy in internal and local affairs. Autonomy has yet to translate into democratization, constitutional reform, and individual liberties benchmarks to be validated in a consistent and verifiable manner.

Western Sahara, as a UN non-self-governing territory, remains in theory under the ambit of the UN decolonization rules, which upholds the right for its people to be consulted on the future political status of the territory, defined as independence, free association, or integration. It will require significant political weight to push the Western Sahara issue away from its time honored status of a decolonization case and re-cast it as a minorities' rights issue in order to fully legitimize and operationalize in the international arena the principle of autonomy.

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Meeting International Norms for Self-Determination through Autonomy

Robert Holley, Moroccan American Center for Policy

The debate over the future of the status of the Western Sahara is a robust case study of how international norms evolve to reflect relevant principles and concepts. As an example, some point to UN Resolution 1541(XV) of 1960 and to the advisory opinion of the International Court of Justice of 1974 as sustaining the demand for Sahrawi self-determination. In fact, the former document offers various options for the legitimate expression of self-determination *including but not limited to* independence, while the latter details extensive historical ties between the Kingdom of Morocco and various Sahrawi tribes in the region. This paper then describes the evolving context for linking self-determination and sovereignty over the past 30 plus years — the period coinciding with efforts to resolve the Sahara conflict.



The 1970 UN Declaration on the Principles of International Law Concerning Friendly Relations and Co-operation Among States expanded the concept of *self-determination* beyond its original purpose of solving post-World War II disputes. However, the definition of the term has eight different variations in that text alone and the vagueness of the concept has led to a longstanding legal debate for which the parameters are unclear and often contradictory.

Even the basic terms of self-determination remain unclear, for example: What determines a “people?” “Sahrawi” identifies numerous tribes and groups of the Sahara, stretching across Morocco, Algeria, Mali, and Mauritania. How can one group (the Polisario Front) arbitrarily claim to represent their wishes and create an independent government in the



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name of all Sahrawis?

The declaration does not explicitly equate self-determination to independence or any other political status. It implies the *right on the basis of which peoples are legally justified to seek political status and is open to wide interpretation in international law*. Yet some have come to interpret this doctrine exclusively as a right to seek independence as the only vehicle for claims of self-determination.

The independence option presents many dilemmas, not the least of which is the proliferation of states with questionable sustainability. Furthermore, it is doubtful if minority groups in these situations are likely to have fair representation or participation in the newly formed independent state. In the case of “Sahrawi nationalism” under the guise of the Polisario Front, this conclusion is well founded, given the non-democratic nature of Polisario’s single party rule under the same President for more than 30 years. In an independent Western Sahara, there would be no guarantor of peaceful or fair integration for non-Sahrawi Moroccans and other minority groups residing in the territory.

The contradiction is compounded because the same 1970 declaration enshrines the right of a sovereign nation to retain control over its territory. The clash of the two principles of self-determination and territorial integrity thus form the core of a fundamental debate in international law: self-determination, if defined as a separatist group’s right to independence, conflicts by definition with a sovereign state’s right to maintain its territorial integrity.

Furthermore, it was concluded in Resolution 1541(XV) that “people” with a mandated claim to self-determination have the choice of three main options: integration with an independent state; free association with an independent state; or emergence as an independent state. According to Principle VII associated with achieving a full measure of self-government under the resolution, the “free association” option is a legitimate starting point for mandating self-determination if chosen through informed and democratic processes.

At the initiative of Liechtenstein in the 1993 UN debates, the General Assembly emphasized the validity of autonomy as an option of self-determination. It was proposed that so long as autonomy allowed for the sufficient expression of a community’s own identity, autonomy could be an adequate expression of self-determination without necessarily undermining other forms of self-determination. Although autonomy was not *specifically* cited in subsequent resolutions as an option for the expression of self-determination, it remains one of the innumerable options allocated under the free association principle and provides an opportunity for flexibility, negotiation, and compromise as dictated by the specificities of each case.

The Western Sahara is a complicated issue involving nomadic tribes, assumed valuable natural resources, an armed opposition group (the Polisario Front), conflicting claims to representation of the “people” (the Sahrawis), the intrusion of external actors (Algeria in favor of the Polisario), regional rivalries, and a historic kingdom with kinship and loyalty claims.

Initial efforts to resolve the status of the Western Sahara consisted of a series of failed attempts to create a voters list for various referendum proposals. By 2003, as the Security Council realized that Morocco and the Polisario Front were unable to reach a consensus on voters, the priority shifted to a negotiated political settlement. With a great deal of prodding from the US and France, among others, Morocco abandoned the integration option and offered a compromise — the autonomy initiative that is now on the negotiating table. The current widespread support for this initiative demonstrates that the concept of self-determination has evolved from a blanket up and down vote on independence to a more nuanced and inclusive free association principle as the solution.



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With these developments in mind, I see the Western Sahara conflict as an opportunity to develop a greater understanding of realistic options for dealing with the concept of self-determination in a context of achieving recognition and actualization of the “rights” of a region without diminishing the territorial integrity of the state party to the conflict.

The current round of negotiations on the status of Western Sahara would not be possible without Morocco’s compromise proposal on autonomy. Morocco has indicated its willingness to modify its proposal through negotiations, but thus far the Polisario Front continues to insist on holding an unworkable referendum or else — threatening a return to war. It insists that a referendum is the only legitimate manner to allow for the self-determination of the Sahrawi people, although international law recognizes as equally legitimate the kind of autonomy relationship proposed by Morocco.

Morocco’s compromise position provides a basis for negotiations that may yet engender a realistic political solution. Autonomy satisfies the “free association” approach within Moroccan territorial integrity while ensuring that the Sahrawis will enjoy a process of democratic self-rule that has eluded them under the autocratic single-party domination of the Polisario Front.

- Autonomy, as defined in the Moroccan Initiative offers broad decision-making powers in the areas of local jurisdiction, including independent legislative duties, control over education and cultural concerns, and judicial competencies.
- Autonomy is a concept for which the terms are flexible, allowing for a real negotiation process toward a mutually acceptable political solution for all parties, whereas the “winner-takes-all” approach of independence is a non-starter. Rather than contributing to instability in the region through the creation of an independent territory of questionable legal standing and limited political assets, autonomy provides the most stable and enduring option for self-determination.
- When applied as the result of a credible dialogue both within the country that is granting the status and with the international community, autonomy contributes to a decentralization of powers, or devolution process, for that country. This process makes the nation concurrently more responsive to citizens, with its leaders increasingly in touch at the local level and more responsible and committed to international standards for democracy and respect for human rights. King Muhammad VI has consistently spoken out in support of Moroccan decentralization and devolution of power.

It is in the interests of the international community to test Morocco’s seriousness by encouraging the Polisario, supported by Algeria, to engage in credible negotiations on a political solution to the Western Sahara conflict based on the principle of free association to be ratified by a vote of the residents of the region. If this way forward is successful, it will provide a viable model for addressing self-determination issues with more creative and hopefully enduring solutions.

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Morocco's Autonomy Proposal

James N. Sater, Al Akhawayn University

After about two years of behind the scenes negotiations, Morocco presented its first official autonomy proposal on April 11, 2007 in an effort to find a final negotiated solution to the long-lasting Western Sahara dispute. Although some countries praised the proposal as a significant shift from Morocco's traditional position of complete sovereignty over Western Sahara, all four subsequent rounds of negotiations on the question of autonomy failed. After the third round on January 7-8, 2008 in Manhasset, New York, the UN Secretary General's personal envoy Peter van Walsum declared in a communiqué that "the parties continued to express strong differences on the fundamental questions at stake."¹



The fourth round, held on March 16-18, 2008, was equally unsuccessful, but the parties agreed to meet again at a later date. It is suggested here that for any autonomy plans in Western Sahara to be accepted by the Polisario Front, the international community should reinforce its pressure on Morocco to democratize. Only this would significantly change the nature of Morocco's sovereignty and may render autonomy a viable solution.

Autonomy under Moroccan sovereignty was first formulated as a *political* solution to the conflict under UN Secretary General Kofi Annan, given that Morocco and the Polisario could not agree on the terms of the referendum process. Starting in 2001, the UN envoy for Western Sahara James Baker was charged by the Secretary General to negotiate a Framework Agreement between Morocco and the Polisario based on interim autonomy. The idea was that this would be significantly different from the winner takes all solution of the referendum.

When Morocco proposed its autonomy initiative in April 2007, the Kingdom apparently hoped that it would achieve enough diplomatic capital for UN recognition of its claims. Even if this may be considered naïve given the Polisario's continued support from major states, especially Algeria and South Africa, Morocco's diplomacy faces a fundamental dilemma that the autonomy proposal temporarily helps resolve: On the one hand, Morocco needs to ensure that there is no outbreak of violence in the territory, nor renewed conventional warfare between Polisario and Moroccan forces. Morocco's economy remains fragile and it depends on its reputation as a stable country — particularly for its tourism industry. On the other hand, independence remains unacceptable among a significant part of Morocco's elite, especially the army.

To solve this dilemma, Morocco must ensure that the UN mission in Western Sahara as well as other channels of communication between itself and the Polisario Front are maintained. This needs to be achieved without giving in to demands for a fair referendum that would potentially result in independence. In other words, Morocco is continuing to play for time; however, unlike the late 1970s or 1980s, the pressure to succeed has increased. The reason is that apart from territorial division, the only real alternative — referendum — has been exhausted as an option.

In this respect, the fact that the UN invited the Polisario and Morocco to the negotiation table to discuss future status can be seen as a significant success. However, the fourth failure to achieve an agreement on autonomy in March 2008 may bring back the prospect of violence, and with it Morocco's primary interest would be seriously put at risk. Although the parties agreed on some basic confidence building measures, such as Sahrawi family reunions, this may not be enough to prevent violence. Hence, there is a window of opportunity but also urgency for the international community to press for concessions in one area that is intimately related to the question of autonomy: democratization.

1. Patrick Worsnip, 'No agreement at Western Sahara talks, U.N. says,' Reuters, January 10, 2008.



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If Morocco's declared aim is to change the nature of sovereignty in Western Sahara, then substantial efforts need to follow suit. After four rounds of failed negotiations, it seems evident that the Polisario is unwilling to accept the proposal as it stands, precisely because a real compromise still needs to be found on the question of sovereignty. To be clear, the "Moroccan Initiative for Negotiating an Autonomy Statute for the Sahara Region" lacks the substance that could serve as a compromise: Although Western Sahara would have an autonomous statute and could collect taxes and would have legislative powers in areas ranging from education to the interior, the King's core constitutional and religious prerogatives as Commander of the Faithful would remain fully intact, as would the Kingdom's juridical order (Article 14 of proposal).² In real terms this would mean the continuation of Morocco's authoritarian order.

As in the rest of Morocco, the allegiance to the monarch by Sahrawi society and political parties including the Polisario, would also remain intact. Sadly, under these circumstances, "autonomy under Moroccan sovereignty" is an oxymoron, as it would translate into "autonomy *à la marocaine*," defined by a sacred King, the content of which would depend on his will and the political situation of the moment. It is difficult to imagine how the Polisario would give up its own political power base in exchange for what would amount to questionable autonomy that would require from them an allegiance to the ruling Alawi dynasty. Autonomy that is merely written on a piece of paper and that may be overruled each time the monarch's prerogatives are involved will hardly suffice. This is especially true as the Polisario Front still enjoys significant international support.

From this perspective, the only way forward for Morocco is to speed up its stalled democratization process. It needs to start serious constitutional reforms that aim at restricting the monarch's unlimited authority to interfere in political decisions, which has created a system of patronage characterized by the absence of public accountability. For the international community, the aim should be to support reform-minded actors that have a similar objective. There are many political currents that openly support the recommendations of the para-governmental organization *Instance Équité et Réconciliation*, which aim at reducing the potential for human rights abuses. These recommendations suggest a reform of Morocco's constitution (especially Article 19) as well as its legal order, which grant absolute authority to the King. Only a reform of this fundamental constitutional matter would give a real sense to the term autonomy, which includes meaningful accountability. This needs to take account of a constitutional right to criticize the King's policies, which is a key to defining and debating the meaning of autonomy by Sahrawi society. In other words, autonomy needs to be protected by a constitutional order that limits central government intervention, and in Morocco this means royal interference. Such constitutional reforms should be based on parliamentary debates, and should include broad political and social discussions in civil society.

Ironically, the manner in which Morocco's "autonomy" proposal was elaborated was symptomatic of the lack of transparency and public debate: These proposals were discussed in complete secrecy, even if they touch upon a core constitutional issue, that of territorial sovereignty. The monarch reinvigorated a handpicked Sahrawi council (Le Conseil Royal Consultatif des Affaires Saharienne, abbreviated CORCAS) to give these proposals more Sahrawi support but not surprisingly, no public debate ever took place in this council. Meanwhile, freedom of speech in Western Sahara remains severely limited if it addresses the alternative to the Moroccan proposal, namely independence.³ In 2006, widespread allegations of the use of torture inside and outside of the territory resulted in the unprecedented move of abolishing the infamous security force *Groupement Urbain de Sécurité* (GUS).

Even if Moroccan historical claims to Western Sahara may be understandable, the realization of these claims within the

2. The official proposal is accessible at <http://www.maec.gov.ma/Initiative/Docs/Initiative%20ang.pdf>.

3. "Morocco: Allow Free Expression in Western Sahara," Human Rights News, January 7, 2008, <http://www.hrw.org/english/docs/2008/01/07/moroccc17691.htm>.



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framework of autonomy will be hampered by the constitution of the Moroccan state as an *executive* monarchy, ironically the very same institution that has invested so much into achieving complete Moroccan sovereignty over the territory. In the end, while the proposed autonomy has had the positive impact of bringing the Polisario and Morocco back to the negotiating table, its real benefit may be elsewhere: It raises questions about Morocco's constitutional framework, and it could provide real incentives for Morocco and for the Polisario to find a genuine democratic framework within which to work towards the resolution of the conflict.

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Western Sahara: Self-Determination and International Law

Stephen Zunes, University of San Francisco

The failure of the Kingdom of Morocco and the Polisario Front to agree on the modalities of the long-planned United Nations-sponsored referendum on the fate of Western Sahara, combined with a growing nonviolent resistance campaign within the territory against Morocco's 31-year occupation, has led Morocco to propose granting the former Spanish colony special autonomous status within the kingdom.

The plan has received the enthusiastic support of the American and French governments as a reasonable compromise to the abiding conflict, which has caused enormous suffering to the Sahrawi people — over half of whom live in refugee camps in neighboring Algeria — and has seriously crippled efforts to advance badly-needed economic and strategic cooperation between Morocco and Algeria as both face the challenges of struggling economies and rising Islamist militancy.



Morocco has failed to live up to the terms of the 1991 UN-supervised ceasefire agreement with the Polisario, which called for a free and fair referendum on the fate of the territory. A series of resolutions by the UN Security Council and the UN General Assembly, as well as a landmark 1975 advisory ruling by the International Court of Justice, have reaffirmed the right of the people of Western Sahara to self-determination. However, France and the United States have blocked the Security Council from enforcing its resolutions as part of their perceived need to strengthen the Moroccan monarchy, seen as a bulwark against Communism and radical Arab nationalism during the Cold War and, in more recent years, an important ally in the struggle against Islamist extremism.

Unfortunately, the Moroccan plan for autonomy falls well short of what is required in bringing about a peaceful resolution to the conflict. Moreover, it seeks to set a dangerous precedent that threatens the very foundation of the post-World War II international legal system.

To begin with, the proposal is based on the assumption that Western Sahara is part of Morocco, a contention that has long been rejected by the United Nations, the International Court of Justice, the African Union, and a broad consensus of international legal opinion. To accept Morocco's autonomy plan would mean that, for the first time since the founding of the United Nations and the ratification of the UN Charter more than 60 years ago, the international community would be endorsing the expansion of a country's territory by military force, thereby establishing a very dangerous and



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destabilizing precedent.

If the people of Western Sahara accepted an autonomy agreement over independence as a result of a free and fair referendum, it would constitute a legitimate act of self-determination. However, Morocco has explicitly stated that its autonomy proposal “rules out, by definition, the possibility for the independence option to be submitted” to the people of Western Sahara, the vast majority of whom — according to knowledgeable international observers — favor outright independence.

Even if one takes a dismissive attitude toward international law, there are a number of practical concerns regarding the Moroccan proposal as well.

One is that the history of respect for regional autonomy on the part of centralized authoritarian states is quite poor, and has often led to violent conflict, as witnessed by the tragic results from the Ethiopian decision to revoke Eritrea’s autonomy in 1961 and the Serbian decision to revoke Kosovo’s autonomy in 1989.

Based upon Morocco’s record of breaking its promises to the international community regarding the UN-mandated referendum for Western Sahara and related obligations based on the ceasefire agreement 17 years ago, there is little to inspire confidence that the Kingdom would live up to its promises to provide genuine autonomy for Western Sahara.

Indeed, a close reading of the proposal raises questions as to how much autonomy is even being offered. Important matters such as control of Western Sahara’s natural resources and law enforcement (beyond local jurisdictions) remain ambiguous.

In addition, the proposal appears to indicate that all powers not specifically vested in the autonomous region would remain with the Kingdom. Indeed, since the King of Morocco is ultimately invested with absolute authority under Article 19 of the Moroccan Constitution, the autonomy proposal’s insistence that the Moroccan state “will keep its powers in the royal domains, especially with respect to defense, external relations and the constitutional and religious prerogatives of His Majesty the King,” appears to afford the monarch considerable latitude of interpretation.

There appears to be a growing consensus within the international community that some sort of compromise, or “third way” between independence and integration, is necessary to resolve the conflict and that a “winner take all” approach, such as a referendum on independence, is unworkable.

While encouraging such compromise and trying to find a win/win situation is certainly the preferable way to pursue a lasting peaceful settlement regarding ethnic conflict and many international disputes, Western Sahara is a clear-cut case of self-determination for a people struggling against foreign military occupation. The Polisario Front has already offered guarantees to protect Moroccan strategic and economic interests if allowed full independence. To insist that the people of Western Sahara must give up their moral and legal right to genuine self-determination, then, is not a recipe for conflict resolution, but for far more serious conflict in the future.

As a result of the French and American veto threats, the UN Security Council has failed to place the Western Sahara issue under Chapter VII of the UN Charter, which would provide the international community with the power to impose sanctions or other appropriate leverage to force the Moroccan regime to abide by the UN mandates it has up until now disregarded. The Polisario’s unwillingness to compromise the right of the Western Saharan people to self-determination, therefore, should not be seen as the major obstacle impeding the resolution of the conflict.

In the comparable case of East Timor, it was only after human rights organizations, church groups, and other activists



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in the United States, Great Britain, Australia, and elsewhere successfully pressured their governments to end their support for Indonesia's occupation that the Jakarta regime was finally willing to offer a referendum which gave the East Timorese their right to self-determination. It may take a similar grassroots campaign in Europe and North America to ensure that Western powers live up to their international legal obligations and pressure Morocco to allow the people of Western Sahara to determine their own destiny.

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