ARAB COURT OF JUSTICE

**THE KINGDOM OF MOROCCO v. PEOPLE'S DEMOCRATIC REPUBLIC OF ALGERIA: REGARDING MOROCCO'S CLAIM TO THE WESTERN SAHARA**

THE KINGDOM OF MOROCCO v. PEOPLE'S DEMOCRATIC REPUBLIC OF ALGERIA

2024 General List No. 002

**COUNTER MEMORIAL**

**OF THE GOVERNMENT OF PEOPLE’S DEMOCRATIC REPUBLIC OF ALGERIA**

filed in the Registry of the Court

on 17 March 2024

I. COMMENT ON FACTS STATED IN THE MEMORIAL OF THE KINGDOM OF MOROCCO

The representatives of the Kingdom of Morocco are correct in their assertion that the Kingdom of Morocco has claimed Western Sahara as their own since 1975, following Spain’s departure. However, these claims are not legally founded, as they directly violate the Sahrawi peoples’ right to self-determination. The Sahrawi people are the indigenous people to Western Saharan land.[[1]](#footnote-0) While tied to Arab culture, they have developed their own distinct cultural and historical identity. Regrettably, the Sahrawi peoples’ indigenous land and culture has been illegally colonized by the Kingdom of Morocco, which has plundered the nation of its natural resources, such as phosphorus, fish, oil, and gas[[2]](#footnote-1). This colonization has already displaced 173,600 Sahrawi people as of November 2023[[3]](#footnote-2). These refugees, hosted in Algerian refugee camps, are in desperate need of humanitarian assistance. The Kingdom of Morocco has systematically exploited the Sahrawi peoples’ land, livelihoods, and right to self-determination.

While certain states do recognize Morocco’s autonomy over Western Sahara, the states mentioned by the representatives of the Kingdom of Morocco are all Western nations. These nations do not understand the cultural and political nuances that exist in the Arab world, and therefore have no understanding or authority over the decision to strip the Sahrawi people of their right to self-determination. Further, their recognition of any spurious claim to sovereignty in the nation means little to the Arab Court of Justice, as none are members. In addition, the United Nations, a more representative body, has acted numerous times in favor of the Sahrawi peoples’ right to self-determination.

II. ADDITIONAL FACTS

The representatives of the People’s Democratic Republic of Algeria here see fit to provide here some additional historical context for the Kingdom of Morocco’s spurious claim of territorial sovereignty in western Sahara. The kingdom began its presence on the soil following a demonstration known as the Green March in November of 1975.[[4]](#footnote-3) On the orders of then-king Hassan that 350,000 Moroccan citizens would march into the territory to assert the nation’s supposed territorial claim.[[5]](#footnote-4) They were supported by 20,000 Moroccan troops. This went against an express declaration in the [International Court of Justice](https://en.wikipedia.org/wiki/International_Court_of_Justice)'s (ICJ) [Advisory Opinion on Western Sahara](https://en.wikipedia.org/wiki/Advisory_opinion_on_Western_Sahara) that condemned the march just hours earlier. [[6]](#footnote-5) This was a strategic move that resulted in the previous Spanish occupiers move out without bloodshed to avoid violence, and provided cover for the Moroccan military seizing southern Saharan cities, as well as nationalist rhetoric for Hassan’s reign.[[7]](#footnote-6) This event marking the start of Morocco’s presence in the region is indicative of the occupational nature of their continued claims to sovereignty in the region: they acquired influence in the first place by marching into a neighboring area, not by having a presence already there or being supported by the residents, but by flooding in with sheer numbers and military strength.

The memorial put forth by the representatives of the Kingdom of Morocco continually refers to the ending of the ceasefire by the Polisario Front in 2020 (under Human Rights Violations section 1, League of Arab States section A, and Treaties section 2, UN Security Council Resolution 338). While it is factually correct that the Polisario front did announce an end to the ceasefire[[8]](#footnote-7), the memorial neglected to mention the context of said ceasefire announcement: under orders from Rabat, military force was used to remove unarmed Sahrawi protestors from a road they were blocking.[[9]](#footnote-8) It was in response to such militarily violent action that the end of the ceasefire was announced. The Kingdom of Morocco therefore misconstrues its role in the affair by leaving this provocation out of the memorial and implying that the decision to end the ceasefire was unprompted and puts many lives in danger.

Finally, the People’s Democratic Republic of Algeria would like to point out to the Court that Sahrawi forced displacement caused by the very Moroccan occupation they are requesting be legitimized is having a severe negative effect on Algeria. [[10]](#footnote-9) There were at least 173,600 Sahrawi refugees in Algeria as of November 2023, located in five refugee camps near Tindouf since 1975, 90% of whom are estimated to be either food-insecure or vulnerable to food insecurity.[[11]](#footnote-10) If the Kingdom of Morocco were indeed a welcome presence in the region, it does not make sense that so many continue to flee ever since the beginning of the occupation. The current situation instead puts an undue strain onto Algeria’s humanitarian resources, as it is estimated that much of the displaced Sahrawi population is located either in said camps, or in remote locations in western Sahara.

III. OBSERVATIONS CONCERNING THE STATEMENT OF RELEVANT LAW IN THE MEMORIAL OF THE KINGDOM OF MOROCCO

## Universal Declaration of Human Rights

The representatives of the Kingdom of Morocco claim that the Polisario Front has threatened the human rights of the Sahrawi people and Moroccan citizens, endangering their lives by ending the ceasefire in 2020. The representatives of the People’s Democratic Republic of Algeria would like to point out to the justices that the decision of the Polisario Front to end this ceasefire was a response to Moroccan-sponsored aggression, as Rabat instructed soldiers to forcibly and violently remove peaceful and unarmed protestors[[12]](#footnote-11). The representatives of the Kingdom of Algeria condemn the Moroccan military for the initial violation of the ceasefire, and recognize the Polisario Front’s decision to end the ceasefire as a justified response to the Moroccan military’s actions.

The representatives of the People’s Democratic Republic of Algeria would like to express concern towards the legitimacy of the alleged human rights violations presented by the representatives of the Kingdom of Morocco. Due to the lack of citations and footnotes in their memorial, we were unable to trace the legitimacy of these claims. Regardless of the legitimacy of these claims, the representatives of the People’s Democratic Republic of Algeria do not recognize alleged human rights violations as an enforceable justification for illegally colonizing and claiming other peoples’ territories. In fact, the Kingdom of Morocco has committed egregious human rights violations in direct violation of the Universal Declaration of Human Rights. In 2022, Moroccan and Spanish forces displayed unlawful force towards migrants, killing 37 people and injuring 76 more[[13]](#footnote-12). According to the representatives of the Kingdom of Morocco’s logic, another nation could justify infringing on Moroccans’ right to self-determination in response to these human rights violations.

1. **Charter of the Arab Court of Justice**

The Kingdom of Morocco’s representatives here note that they respect peacefully settling disputes without military force, and accuse the Polisario front of not respecting this ideal. However the People’ Democratic Republic of Algeria would point out that the Kingdom does not respect other international conventions, exemplified by the clear refusal of the government, which is party to the UN, to comply to the ICJ’s recommendation to administer a referendum[[14]](#footnote-13) and that the Kingdom had no claim to territorial sovereignty. [[15]](#footnote-14) Morocco, through its continued use of its own military force since the Green March of 1975, has proven that it is not, in fact, committed to a peaceful resolution in the region through continued military presence and resusals to abide or attend proposed diplomatic solutions.

1. **Charter of the League of Arab States**

Counter to the implications made by the representatives of the Kingdom of Morocco, the Polisario Front did not act in isolation in the region with regards to their use of force that was pointed out. Morocco occupied the area militarily, which is also in violation of the first sentence of Article V the representatives cited. In addition, whether a group is using military force holds no bearing on the territorial sovereignty claims of neighboring states, and that the Kingdom is asserting militarily that their claim is valid violates the spirit of the written charter.

1. **Case Precedent: ICJ Case Precedent as Established by Frontier Dispute (Benin/Niger)**

The use of this particular case as precedent for the situation in Western Sahara presents a clear false equivalency. This decision, rendered by the ICJ in 2005, rules over a border dispute between two existing sovereign nations in Benin and Niger, each with their own existing right to self-determination. As such, both states, each with distinct cultural and historical identities, exist with sovereignty and self-governance.

In comparison with the dispute in Western Sahara, clear divergences emerge. In this case, only the Kingdom of Morocco enjoys sovereignty, self-governance, and the right to self-determination. The Sahrawi people, in comparison, enjoy none of these rights as their land is illegally occupied by the Kingdom of Morocco. Furthermore, the dispute between Benin and Niger is miniscule in size and significance when compared to the case of Western Sahara. According to the ICJ, the dispute primarily concerned the ownership of islands located on the River Niger[[16]](#footnote-15). The representatives of the People’s Democratic Republic of Algeria does not intend to diminish the severity of this border dispute, but considering its small size in area, its result cannot be used as precedent to the ruling of the entire Western Sahara, especially when it concerns the Sahrawi people’s right to self-determination.

The representatives of the People’s Democratic Republic of Algeria would like to express our utmost respect for decisions of the ICJ. Therefore, the representatives would like to direct the justices’ attention to the decision of the ICJ regarding Western Sahara in 1975, which these representatives see as the most applicable precedent. This case will be detailed in the Statement of Relevant Law.

1. **Western Sahara Partition Agreement**

The Kingdom of Morocco references that Spain instituted a temporary administration in the territory, wherein Morocco and Mauritania participated before Mauritania gave up their territorial claims. However, this agreement did not in any way include the native Sahrawi residents and is therefore invalid, as it did not recognize their right to self determination, the importance of which will be legally developed further in this Counter Memorial. In addition, this partition agreement is in direct violation of a 1975 ICJ declaration[[17]](#footnote-16) that neither Morrocco nor Mauritania had a territorial sovereignty claim in Western Sahara, and thus referencing it as precedent is invalid and against the decision of an internationally respected court with a similar purview of this one.

1. **UN Security Council Resolution 338 (1973)**

The only point brought up in regards to this resolution is the 2020 ending to the ceasefire, which is presented as a threat to international law. However the Representatives of the People’s Democratic Republic of Algeria would like to point again to the Morrocan use of the military context in which the ceasefire was ended, against nonviolent protesters. Military occupation also is a threat to international law, the unprovoked historical extent of which has been detailed above.

IV. STATEMENT OF RELEVANT LAW

**CASE PRECEDENT:**

1. **ICJ Advisory Decision, 1975**

The penultimate paragraph of the Advisory Opinion was to the effect that:

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 Sahara. 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 General Assembly 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.

The International Court of Justice delivered the above summary of its ruling in late 1975 regarding questions about the nature of Morocco and Mauritania’s territorial sovereignty claims presented to it by the United Nations General Assembly under Resolution 3292. The Court found that while there were legal and historical ties between the aforementioned nations and the Western Sahara, these ties do not constitute any legitimate claim of territorial sovereignty over the region from either the Kingdom of Morocco or Mauritania. As such, the Court found that there was no basis for violating the principle of self-determination of the residing people of Western Sahara. Based upon this precedence, the clear territorial sovereignty claim that Morocco is presently putting before the Arab Court of Justice is spurious. This advisory decision pertains directly to the question of Western Sahara, and expressly recognizes the self-determination rights of the people there. The People’s Democratic Republic of Algeria respects the authority of the ICJ, and would like to point to this decision as the most relevant precedent in this case, which rules that Morocco does not, in fact, have a legitimate territorial sovereignty claim to the region.

**INTERNATIONAL CONVENTIONS**

1. **UN Resolution 1514**

1. 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.

2. All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

3. Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.

4. All armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence, and the integrity of their national territory shall be respected.

5. 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 colour, in order to enable them to enjoy complete independence and freedom.

The UN’s Resolution 1514, adopted in 1960, expressly recognizes and calls for adherence to all peoples’ right to self-determination. The representatives of the People’s Democratic Republic of Algeria would like to point the justices to Clause 1, stating that the subjection of people to alien governance and exploitation is a direct violation of the UN Charter. As the representatives have previously referred to, the Sahrawi people are a culturally and historically distinct group that do not identify with Moroccan sovereignty and governance. Moreover, the Kingdom of Morocco is exploiting valuable natural resources and labor from Western Sahara.

1. **Geneva Conventions IV, Article 49**

Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.

Nevertheless, the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.

The Occupying Power undertaking such transfers or evacuations shall ensure, to the greatest practicable extent, that proper accommodation is provided to receive the protected persons, that the removals are affected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated.

The Protecting Power shall be informed of any transfers and evacuations as soon as they have taken place.

The Occupying Power shall not detain protected persons in an area particularly exposed to the dangers of war unless the security of the population or imperative military reasons so demand.

The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.

The Kingdom of Morocco has referenced in its memorial the safety of its citizens in the Western Saharan region. The transfer of said citizens into what has been defined as a militarily occupied territory at the behest of a government is an express violation of the final clause in Article 49 against transferring parts of its own civilian population into the territory. Western Sahara is defined as being militarily occupied by the Kingdom of Morocco since, as stated above, the occupation has no legal basis.[[18]](#footnote-17) Therefore the presence of Moroccan citizens, especially regarding acquiring votes in potential elections and referendums thus constitutes an express violation of Article 49, which not only endangers said citizens but also demonstrates disregard for respected international law and convention.

1. **UN Resolution 690: The Situation Concerning Western Sahara (1991)**

1. Approves the report of the Secretary-General, transmitted to the Council in accordance with resolution 658 (1990):
2. Expresses its full support for the efforts of the Secretary-General for the organization and the supervision, by the United Nations in cooperation with the Organization of African Unity, of a referendum for self-determination of the people of Western Sahara, in accordance with the objectives mentioned in his report;
3. Calls upon the two parties to cooperate fully with the Secretary-General in the implementation of his plan as described in his report of 18 June 1990142 and amplified in his report of 19 April 1991;

Clause 2 of UN Resolution 690 calls for the organization of a referendum regarding the self-determination of the people of Western Sahara. Clause 3 also very importantly calls for the cooperation of both parties in the implementation of this referendum. Unfortunately, this referendum has not yet proceeded due to the Kingdom of Morocco’s inability to cooperate.[[19]](#footnote-18) This Resolution not only displays the international consensus for the need for a referendum, but also shows the Kingdom of Morocco’s disregard for international conventions.

1. **UN Resolution 56/282: Question of East Timor (2002)**
2. Recalls the important role played for many years 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 in promoting the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in relation to East Timor;
3. Welcomes the progress and the achievements in East Timor, and commends the Secretary-General and the United Nations Transitional;
4. Also welcomes the forthcoming official transfer of power from the United Nations to the East Timor government institutions, as recommended by the East Timor Constituent Assembly;
5. Decides to remove East Timor from the list of Non-Self-Governing Territories upon its accession to independence

The representatives of the People’s Democratic Republic of Algeria would like to recognize, while maintaining that every international dispute is nuanced, that the question of East Timor, as decided upon by the UN General Assembly in 2002, represents stark similarities to that of Western Sahara and presents a similar question of self-determination and self-governance.

East Timor was once, similar to Western Sahara, colonized by European powers. When Portugal withdrew from its colonized territory in 1975, the people of East Timor had to fight for their right to self-determination, similar to the Sahrawi people. Unfortunately, Indonesia invaded and colonized East Timor, exploiting its natural resources, similar to the Kingdom of Morocco in Western Sahara.[[20]](#footnote-19) After significant unrest in the area, the United Nations brokered a referendum in East Timor that overwhelmingly decided for independence. Unfortunately, this kind of a referendum has not yet been possible in Western Sahara.[[21]](#footnote-20) Following the results of the referendum, the United Nations decided to recognize East Timor as an independent nation, removing it from the list of non-self-governing territories - a list that Western Sahara still remains on.

UN Resolution 56/282 officially recognizes East Timor’s independence. The precedent that this decision of the United Nations sets should bring hope to the Sahrawi people that they too can achieve independence in Western Sahara.

V. CONCLUSION

Accordingly, on the basis of the facts and arguments set forth in this Counter-Memorial, and without prejudice to the right further to amend and supplement these submissions in the future, People’s Democratic Republic of Algeria asks the Court to adjudge and declare that:

All of Morocco’s territorial sovereignty claims in the region be refuted,

A referendum be held within the region to comply with the Sahrawi people’s right to self-determination with special attention on the legitimacy of such a referendum, and

Attempts to regulate which organizations the People’s Democratic Republic of Algeria is affiliated with are out of the purview of the Arab Court of Justice considering the claim is solely regarding Moroccan territorial claims.

The Government of People’s Democratic Republic of Algeria has designated the undersigned as its Agents for the purposes of these proceedings. All communications relating to this case should be directed to these Agents.

Respectfully submitted,

 X . X .

Agents of People’s Democratic Republic of Algeria.

1. <https://www.jstor.org/stable/48629027> [↑](#footnote-ref-0)
2. https://arabcenterdc.org/resource/the-polisario-front-morocco-and-the-western-sahara-conflict/ [↑](#footnote-ref-1)
3. https://www.unhcr.org/us/countries/algeria [↑](#footnote-ref-2)
4. <https://www.jstor.org/stable/4325817> [↑](#footnote-ref-3)
5. <https://www.jstor.org/stable/3991228?seq=22> [↑](#footnote-ref-4)
6. [Self-Determination and Secession in Africa: The Post-Colonial State](https://books.google.com/books?id=6n49BAAAQBAJ&pg=PA260) [↑](#footnote-ref-5)
7. <https://www.jstor.org/stable/3991228?seq=22> [↑](#footnote-ref-6)
8. <https://www.iiss.org/en/publications/strategic-comments/2021/the-end-of-the-ceasefire-in-western-sahara/> [↑](#footnote-ref-7)
9. <https://www.iiss.org/en/publications/strategic-comments/2021/the-end-of-the-ceasefire-in-western-sahara/> [↑](#footnote-ref-8)
10. <https://unric.org/en/far-from-the-headlines-after-50-years-refugees-from-western-sahara-are-still-in-camps/> [↑](#footnote-ref-9)
11. [Algeria - ACAPSacaps.orghttps://www.acaps.org › countries › algeria](https://www.acaps.org/en/countries/algeria#:~:text=There%20were%20at%20least%20173%2C600,humanitarian%20aid%20for%20their%20livelihoods.) [↑](#footnote-ref-10)
12. <https://www.iiss.org/en/publications/strategic-comments/2021/the-end-of-the-ceasefire-in-western-sahara/> [↑](#footnote-ref-11)
13. <https://www.amnesty.org/en/petition/justice-for-dead-and-missing-at-melilla/> [↑](#footnote-ref-12)
14. https://www.icj-cij.org/public/files/case-related/61/6197.pdf [↑](#footnote-ref-13)
15. https://www.icj-cij.org/public/files/case-related/61/6197.pdf [↑](#footnote-ref-14)
16. https://leap.unep.org/en/countries/bj/national-case-law/frontier-dispute-beninniger#:~:text=The%20Frontier%20Dispute%20(Benin%2FNiger,and%20its%20tributary%20Mekrou%20River. [↑](#footnote-ref-15)
17. <https://www.icj-cij.org/public/files/case-related/61/6197.pdf> [↑](#footnote-ref-16)
18. ["Western Sahara"](https://books.google.com/books?id=nZuzAwAAQBAJ&pg=PA262) [↑](#footnote-ref-17)
19. <https://www.hrw.org/reports/1996/WR96/MIDEAST-09.htm> [↑](#footnote-ref-18)
20. <http://timor-leste.gov.tl/?p=29&lang=en> [↑](#footnote-ref-19)
21. Ibid. [↑](#footnote-ref-20)