

Self-Determination as Resistance: Sahrawi and Palestinian Struggle for the UN

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This is an excerpt from *The United Nations: Friend or Foe of Self-Determination?* Get your free copy here.

This chapter[1] draws on the cases of Western Sahara and Palestine to begin exploring the United Nations' (UN) role in realising the peoples' right to self-determination. It addresses the UN's role in conflicts perceived by actors as protracted due to its lack of resolve, due to manipulation by world powers and due to the 'international community's lack of political will', as diplomats, parliamentarians, party cadres and activists said in almost every interview conducted for this research.[2] Considering Sahrawis' and Palestinians' growing scepticism, but also how they continue to claim the fulfilment of the self-determination promise by and through the UN, I address their persistence as resistance conducted through continuing participation. The parallel does not imply that both cases are identical. Still, they share many attributes and goals, beginning with their characterisation as struggles for self-determination against protracted foreign occupation and colonisation. The chapter starts by sketching a conceptualisation of self-determination and its development. The first part discusses the concept's development and the second overviews UN approaches to both cases, addressing Palestinian and Sahrawi expectations and action. It briefly contextualises the cases within a colonial framework sustained by a significant asymmetry and structured by Israel's and Morocco's enduring military occupation of Palestine and Western Sahara respectively. The conclusion reflects on how resistance to negligence and manipulation translates into a struggle for the very UN, for its promises and, ultimately, for liberation.

A Developing Principle or an Accommodating Promise?

The conceptualisation of self-determination has long advanced according to international dynamics. This section offers a non-exhaustive chronology exemplifying debates on the peoples' freedom from foreign domination and freedom to choose their own political systems based on national and territorial claims, which have promoted the right of self-determination. Many genealogies identify Woodrow Wilson's *Fourteen Points* speech as the principle's liberal parent, but neglect debates with which Karl Marx, Friedrich Engels, Vladimir Lenin, Rosa Luxemburg and others engaged, and the role of peoples' struggles in pushing for the principle's development (Cassese 1995; Bowring 2008). For instance, for Bowring (2008, 9), the right of peoples to self-determination, 'the most significant gain of post-World War II international law', was 'welded' to it 'in the context of the Russian Revolution, in theoretical and practical struggles'. Although the latter is the reading my research builds on, this section deals with self-determination within the UN framework.

The 1945 UN Charter defines self-determination as essential for strengthening universal peace in Chapter I, while Chapter XI sets the framework for decolonisation. In 1960, in a period of intensifying anti-colonial struggle, UN General Assembly (UNGA) Resolution 1514 (XV) adopted the Declaration on the Granting of Independence to Colonial Countries and Peoples, referring to principles of national unity and territorial integrity. The Declaration brings important points to the UN register. It deems the process of liberation 'irresistible and irreversible' and argues for an end to colonialism 'and all practices of segregation and discrimination associated therewith' in order to 'avoid serious crises'. It also declares that alien subjugation, domination and exploitation of peoples violates their human rights and the UN Charter's principles, preventing 'the promotion of world peace and cooperation'.

However, discussion on whether self-determination was indeed graduated from a political principle into a legal

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right, or when that happened, is ongoing. Laing (1992) argues that, through a 'humanitarian universalism', the 1941 Atlantic Charter issued by U.S. President Franklin Roosevelt and British Prime Minister Winston Churchill – later endorsed by others in the 1942 Declaration of the United Nations – establishes the *norm* of self-determination. Three years before the signing of the UN Charter, the Declaration by the United Nations 'pledged the signatory governments to the maximum war effort and bound them against making a separate peace' (United Nations 1942). Bowring (2008) argues that the right is defined as such in common Article I of the 1966 international covenants on civil and political rights and on economic, social, and cultural rights (ICCPR and ICESCR). The article states: 'All peoples have the right of self-determination', they may 'freely determine their political status and freely pursue their economic, social and cultural development', as well as 'freely dispose of their natural wealth and resources'. It also declares that all state parties to the Covenants shall promote the realisation of the right of self-determination and respect that right.

Moreover, self-determination is usually defined by three categories: a) that of colonial peoples, b) that of secession, and c) that of groups demanding recognition or collective rights within states (Archibugi 2003). Respect for the diversity of democratic systems 'as important element for the promotion and protection of human rights', urged for in a report adopted by UNGA Resolution 60/164 (2005), has also been promoted. Some still argue that self-determination cannot be concluded in one historical event and must be considered a process, 'subject to revision and adjustment', one that 'cannot be understood as a one-time choice (...) because, like the rights to life, freedom and identity, it is too fundamental to be waived', as put by Alfred-Maurice de Zayas (Office of the High Commissioner for Human Rights 2014, 3). This line of argument raises concerns with a relativization of *certain* sovereignty, national unity and territorial integrity and the instrumentalization of conflicts by regional and world powers. An example is the secession of the Serbian province of Kosovo and Metohija, aided by the 1999 military intervention of the North Atlantic Treaty Organization (NATO) against the Federal Republic of Yugoslavia. This operation was an aggressive act (Jovanovic 2019) and a violation of the UN Charter (Momtaz 2000).[3]

Authors regarding the 'revolutionary and unclear character' of self-determination (Koskeniemi 1994, 241) or arguing for its historical recovery as an achievement of struggle (Bowring 2008) scrutinise its provenance, operationalisation and emancipatory potential. I engage with the cases of Palestine and Western Sahara, and am concerned with the kind of struggle through which the principle and right of self-determination is fought for. Hence, I draw from works focused on the role of resistance in the historical development of international law such as those of Cassese (1995), Rajagopal (2003), Bowring (2008), among others. This perspective supports my approach to struggles conducted within an institution said to be *the* promoter of self-determination (the UN), while considering that this being a *struggle* shows that the right of self-determination is disputed depending on the cases at hand, as discussed ahead.

The UN Approach to the 'Right of Peoples' from Palestine and Western Sahara

Colonial historical continuity is manifest in the cases of Palestine and Western Sahara.[4] Persistence in conducting liberation struggles through international institutions and legal instruments appears to reflect resistance to a historical closure that leaves people behind. But the variation in UN approaches to different cases shows how politically charged disputes are. Susan Akram (2014, 78) engages in this discussion by addressing the reasons for change in a territory's status, with emphasis on military occupation and the lack of clarity in defining colonisation in Palestine and Western Sahara. She notes specifically the UN's inability to enforce the prohibition of territorial aggression, prolonged occupation, and settler implantation, which constitute 'major barriers' to the realisation of both Palestinian and Sahrawi self-determination. This section offers an overview of each case, showing how these peoples' recent histories were impacted by the UN.

Western Sahara was put under Spain's control at the 1884 Berlin Conference and has been listed by the UN special committee for decolonisation as a non-self-governing territory since 1963.[5] In 1965, the General Assembly requested that Spain 'take immediately all necessary measures for the liberation' of the territory through UNGA Resolution A/2072 of 1965, and repeatedly urged the administering power to organise a referendum on self-determination. Confrontation ensued against the Sahrawi liberation movement – organised in the Popular Front for the Liberation of Saguía el-Hamra and Río de Oro (Polisario) in 1973. A UN mission of

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inquiry visited Western Sahara, Morocco, Mauritania and Algeria, reported that 'support for Polisario and for independence in Western Sahara was widespread and recommend[ed] the holding of a referendum for self-determination' (Fadel 1999). The mission was requested by the UN General Assembly in the same resolution where it requested the advisory opinion of the International Court of Justice (A/RES/3292 (XXIX) 13 December 1974). Spain first resisted, then accepted the consultation, starting preparations by conducting a census, but Morocco and Mauritania rejected it (ibid.). This was among the first chapters of ineffective UN attempts.

Spain left the territory in 1975 without organising the referendum, questionably transferring control to Morocco and Mauritania. Secret negotiations resulted in the 1975 Madrid Agreements, which does not legally mean that Spain's responsibility as an administering power was thus transferred (Zoubir 2007, 162; Ojeda-García et al. 2017). Polisario declared the Sahrawi Arab Democratic Republic (SADR) in 1976 and Mauritania abandoned its claims in 1979, while Morocco stayed in the territory, claiming that it was part of the kingdom before Spanish colonisation. However, a 1975 advisory opinion of the International Court of Justice (ICJ) did not find enough evidence supporting Morocco's claim and reaffirmed the Sahrawi people's right to self-determination (International Court of Justice 1975). Morocco interprets the opinion as favourable to the kingdom's claim over Western Sahara, thus justifying invasion, annexation of and settlement in the territory (Zartman 2014, 60). Armed conflict dragged on for almost two decades.

Through the UN and the Organisation of African Unity's facilitation, a settlement plan established the 1991 cease-fire and 'the holding of a referendum without military or administrative constraints to enable the people of Western Sahara to choose between independence and integration with Morocco'.^[6] It also established the UN Mission for the Referendum in Western Sahara (MINURSO), tasked with organising the consultation. The first deadline was January 1992, but the referendum was repeatedly postponed, until it disappeared from sight (Fadel 1999; Zunes and Mundy 2010). Partial proposals to revive the process, presented by the UN Secretary-General's personal envoy James Baker in 2001 and 2003 and Morocco's 2007 Autonomy Plan to grant Western Sahara autonomy have downplayed or neglected commitments with a referendum that could include independence as an option (Zartman 2014, 66–67). Despite essentially limiting self-determination to autonomy from the outset, Morocco's plan was praised for 'serious and credible efforts' by the UN Security Council and representatives from the US, France, Mali, and others (Morocco World News 2018).

As for Palestine, the UN has grappled with the question since its own establishment. With the end of World War I and the fall of the Ottoman Empire, the United Kingdom and France divided the Levant. Soon, the nascent League of Nations established a Mandate System, putting Palestine under British administration, from the 1920s to 1948. The socioeconomic impacts on Arab inhabitants of colonisation and massive immigration bred growing conflicts, and the British administration tried to appease both Arabs and the Zionist movement (Halliday 1972; Masalha 2003; Said 2003; Pappé 2006). Variations of a partition plan were promoted until the UNGA adopted one, through Resolution 181, in 1947, even though most of the Arabs rejected the proposal, which they saw as continuing colonisation (Jamal 2005; Saleh 2014). While the Mandate System did little towards decolonisation, being what Akram (2014, 76) describes a 'compromise between the notion of self-determination and the interests of the colonial powers', when the League was dissolved, some territories were put under the UN Trusteeship System and have either achieved independence or association with other states. However, when the British Mandate ended and the State of Israel was declared, in 1948, Palestine's question was not transferred to UN Trusteeship but to a Special Committee on Palestine (UNSCOP). War ensued leaving around 15,000 Palestinians dead and about 500 villages destroyed, driving more than 700,000 to seek refuge in neighbouring villages or countries, creating an enduring 'refugee problem' (Masalha 1992, 2003; Said 2003; Pappé 2006). Refugees are since assisted by the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), created in 1949. Other confrontations between Israel and Arab countries had direct impact on the question of Palestine, which explains the agency's growing challenges. In 2018, six million Palestinian refugees and dependants were registered for assistance (UNRWA 2019), a situation that endures despite the refugees' widely recognised right of return, as stated in UNGA Resolution 194(III) of 1948.

In 1964 the Palestinian Liberation Organisation (PLO) was established, soon confronting Israel through armed action and initially classified as a terrorist organisation. In the 1967 War, Israel occupied the West Bank, Gaza

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Strip and other Arab territories that remain under its control, and focus shifted to the occupying power's responsibilities toward the people's protection under the unclearly defined 'temporary condition' of an occupation that became prolonged (Tilley 2012; Jabarin 2013).[7] The conflict's framework has been that of international humanitarian law, but due to the protraction of such a situation and the practices and policies sustaining it, looking at it as colonialism seems inevitable. After having affirmed the Palestinian people's inalienable *national rights* in Resolution 3236 (1974), the UNGA subsequently invited the PLO, as the representative of the Palestinian people, 'to participate in the efforts for peace in the Middle East', in Resolution 3375 (1975).

Concerned with the situation's protraction, that same year the UNGA established the UN Committee on the Exercise of the Inalienable Rights of the Palestinian People (CEIRPP). It was mandated with advising the UNGA on a programme to realise the Palestinians' 'right to self-determination without external interference, the right to national independence and sovereignty, and the right to return to their homes and property from which they have been displaced', and expressed concern that 'no just solution to the problem of Palestine has yet been achieved' (UNGA Resolution 3376). The mandate has been renewed annually, which reflects how the situation has dragged on. In the 1990s, mutual recognition between Israelis and Palestinians paved the way for the Oslo Agreements, which should have led to the State of Palestine's independence. However, the territory fragmented and became increasingly populated by Israeli settlers in colonies mainly built on expropriated land. Palestinian institutions became deeply dependent on foreign and Israeli funding, while the people remained under an omnipresent Israeli military occupation, in refugee camps or exile. The result was an ever-deeper discontentment with the peace process (Said 2001; Shlaim 2005; Khalidi 2006).

Sahrawis and Palestinians share many aspects in their struggles for self-determination. They both face a diplomatic dead-end favouring the occupying powers, which benefit from world powers' support, and seek a way out of a colonising status quo. For instance, the United States has repeatedly prioritised Israeli over Palestinian concerns while declaring itself a mediator, financed Israel's military and declared that it would continue to veto UN Security Council resolutions contrary to Israel's interests (White House 2015). However, their cases have different places in the UN. Western Sahara is listed as a non-self-governing territory, has its claim mainly dealt with by the Decolonisation Committee, and has a UN mission in place. Palestine is not on the decolonisation list: its case is dealt with through dedicated committees and agencies and has its right to a state clearly affirmed since the UN establishment. When addressing Palestine, the UN Secretary-General's 2017 Report on UN activities relating to self-determination (A/72/317) recalls that '[t]he right of the Palestinian people to self-determination, including the right to their independent State of Palestine, was reaffirmed by the General Assembly in its Resolution 71/184.'

Since the 1960s, the Sahrawis' general will for independence has been recognised (Fadel 1999; Zunes and Mundy 2010), but this option has been missing from recent calls for negotiated settlement (Roussellier 2014). For instance, in contrast with Palestine's case, which is dealt with in a dedicated section, the same 2017 Secretary-General Report addresses UNGA activities on Western Sahara in the Non-Self-Governing Territories section. The text expresses support for negotiations initiated by the Security Council 'to achieve a just, lasting and *mutually acceptable* political solution, which would provide for the self-determination of the people of Western Sahara'. Further, the report welcomes the parties' 'commitment to continue to show political will and work in an atmosphere propitious for dialogue, in order to enter into a more intensive phase of negotiations, in good faith and without preconditions' (A/72/317).

The State of Palestine was recognised by over 130 countries and by the UNGA in 2012 as an observer non-member state, but its territory and people remain under occupation. The SADR was recognised by over 80 countries and is a member of the African Union (AU) but has a decolonisation process pending. Despite protraction and frustration, Palestinians and Sahrawis demand commitment with UN principles. They resist a stagnation that enables the continuing colonisation of their territories, each facing opponents that count on diplomatic and financial support mainly from the US, the UK and France (Ojeda-García et al. 2017; Khalidi 2006). There is a clear vision laid out by Palestinian and Sahrawi actors of how political their struggle is, a perspective that informs their strategies, bent on exposing colonial lineages and structures.

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Conditional Self-Determination

Recently, UNGA Resolution 72/159 (2017) stated 'firm opposition to acts of foreign military intervention, aggression and occupation', which result 'in the suppression of the right of peoples to self-determination and other human rights in certain parts of the world'. Still, the UN has not remedied these instances; protraction has fed into direct conflicts and colonisation, while self-determination becomes an obstacle or a complex variable to be considered in policies and diplomatic strategies. Morocco argues that it defends territorial integrity, even though the kingdom's claim over Western Sahara is unsubstantiated, as the ICJ stated in 1975. Security, in both Morocco's and Israel's cases, is also presented as a strategic concern protracting the actualisation of self-determination; it is also often used to justify the multifaceted control exercised by the occupying powers over people's lives and territory (Turner 2015; Halper 2015), systematic repression and even military offensives. Carlos Ruiz Miguel (2001, 344) argues that political manoeuvres and attempts at ignoring the Sahrawi people's right challenges the very evolution of international law. He questions whether this right to self-determination can be replaced by a political arrangement not contemplated by any law, and whether a people's statehood can be disputed while a referendum for self-determination is still pending (*ibid.*). The notion that the form of the conflict's end, however recognised the right of self-determination, is up for negotiation is found in UN resolutions and diplomatic attempts, which raises concerns of the fact that self-determination itself is relative (*ibid.*; Becker 1998).

Human rights are key to the strategic frameworks of these struggles. Palestinians and Sahrawis, in interviews and reports, argue that the struggle for self-determination and human rights advocacy are the two faces of the same coin. Bowring (2008, 129) considers that human rights 'provide a ground for judgment, to the extent that they are understood in their historical context, and as, and to the extent to which, they embody and define the content of real human struggles'. Actors interviewed for this research and more denounce the effects of protracted colonisation and military occupation with human rights advocacy and complaints to UN mechanisms and special procedures. Interviews, my participant-observation in activities and analysis of campaign material, reports and publicised debates show that their strategies have taken dynamic forms, spurring, aided by these struggles' expansion and growing internationalisation, and also responding to their opponents' equally changing approaches.[8] Examples are campaigns against Moroccan exploitation and commercialisation of Sahrawi natural resources (Sahara Rise 2018), the Palestinian campaign for Boycott, Divestment and Sanctions (BDS), or the demand for a database to be released by the UN Office of the High Commissioner for Human Rights on companies that deal with Israeli settlements in Palestine (Al-Haq 2018).

Archibugi (2003, 488) argues that if the right of self-determination is 'self-assessed by conflicting political communities', and not 'precisely matched by a body of law', conflict outcomes 'will likely reflect the power of the contending parties rather than the interest of the peoples'. Advocating for a cosmopolitan legal order, he argues that self-determination 'should be fitted into a legal system far broader than that of single states or even that of interstates law' (2003, 489). Considering that such an order is not coming about soon, Archibugi suggests that 'independent third parties should assess the conflicting claims' (*ibid.*). However, could one expect that third parties do not project their own concerns onto cases, or that main parties accept opinions and/or judgements given by independent institutions such as courts or UN bodies? For instance, the 1975 ICJ Advisory Opinion on Western Sahara is disputed by Morocco, which interprets the piece's preamble as favourable to its claim, as mentioned before. As for Palestine, the reaction of Israel and the US to UN resolutions and reports is to claim that agencies, bodies or experts involved in their production have an anti-Israel bias (Ahren 2018). Moreover, despite its numerous resolutions and covenants seemingly granting peoples the right, as an international organisation, made of states guided by their respective foreign policies, the UN is clearly influenced by geopolitical considerations. Peoples struggling for self-determination understand that and do engage in these dynamics, while insisting on recovering what has historically been promoted as principled commitment, such as the right to self-determination.

Conclusions: Struggling for the UN

Fundamental issues outlined in this chapter include a perceived lack of definition of the subjects of the right to self-determination, questions regarding its status as a legal norm, its implementation and its stance in relation to principles such as territorial integrity and national unity. The first argument usually unfolds into two: how to define

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a 'people' and, considering specific cases of independence/liberation, how to demonstrate or justify historical claims over a territory. However, discussions along identity lines may work as deflection, keeping conflicts 'intractable', in which case the most powerful actors benefit from maintaining the *status quo*. Apparent vagueness and ambiguity keep disputes 'too complex' and are met with calls for compromise, as shown in the overview of Palestine and Western Sahara's cases, where their right to self-determination is put up for negotiation.

The UN has been perceived as unable or unwilling to make good on its promise. During the UN Special Committee on Decolonisation's session of June 2017, its Chair Rafael Darío Carreño (Venezuela) questioned the committee's relevance, stating that it is pervaded by a lack of interest in ending colonialism and lack of cooperation from administering and occupying powers.[9] Departing from the recognition of the Sahrawis' right to hold a referendum and adopting a strategy of denial after the 1991 cease-fire, as mentioned above, Morocco presented the 2007 Autonomy Plan previously mentioned, as if expressing good faith to rekindle negotiations, but removed the option for independence from the equation. Conditional self-determination becomes a concession from Morocco, which, as mentioned, is considered evidence of its 'serious and credible efforts' by UN bodies and world powers.

Participation and interaction with UN mechanisms and procedures vary according to challenges concerning access to the institution, which depends on accreditation and registration as non-governmental organisations according to state law.[10] By observing six sessions of the UN Human Rights Council (UNHRC) for two years and interviewing civil society actors there, I could list a few. For instance, the short time to speak at plenary sessions, the process undergone to get access to UN events, is a bureaucratic often prohibitive procedure given the limited resources available to civil society actors who face obstacles registering organisations and associations in the occupying states' systems. Obstacles such as fear of reprisals from these states for their work, or political dilemmas regarding the adoption of these states' legal frameworks, and much more. Still, people continue to participate, adopting diverse tactics to surpass such challenges, as Cheikha Abdalahe, a young Sahrawi advocate stated in a side event at a 2018 session of the UNHRC. On how to 'make it hard for them' just to have people disappear from history, Abdalahe stated:

[World leaders] don't care about us, I am sure. What can we do? We have tens of thousands of people to defend. They give us time to speak here, about 1 minute and 30 seconds. But how can we talk about so many years of suffering in this time? This is a theatre, but we have a role to play here. So, let's play it right. [...] Are we wrong to believe in the UN? [...] They want us to disappear, but guess what, we will make it hard for them.[11]

Officials and activists interviewed from both Palestine and Western Sahara affirm that despite their commitment to diplomacy, self-determination is non-negotiable. After decades of waiting and being frustrated, some Sahrawis express concerns that some youth stopped believing in the international community's efforts and are ready, though not willing, to return to armed struggle. On the other hand, these actors state their resolve in 'claiming' international law and the very UN for the peoples' struggles. The problem is often said to be the monopolisation and manipulation of the main UN bodies by world powers with their stakes in these conflicts. Still, Palestinian and Sahrawi initiatives show historical but also ever broader engagement with instruments, mechanisms, mediation attempts, and in political action. However, movements can be increasingly weary of the huge efforts made for slow or no progress, showing suspicion towards institutions and cynicism regarding the lack of political will from the 'international community' to recognise their claims, even though self-determination is a UN founding principle. Hence, the demanding of the fulfilment of that promise by the UN is one aspect of Sahrawi and Palestinian resistance to colonisation and is a refusal to waiver on rights fought for – and a refusal to waiver on the very UN itself.

Notes

[1] This piece is part of ongoing research; its topic is certainly not exhausted here. Many aspects of the discussion on self-determination, the UN's limits and the cases addressed had to be left out, for now. I wish to express my sincere gratitude for the editor's invaluable comments and amendments to the initial draft and, as per usual, state that remaining flaws are my own responsibility.

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[2] Interviews with civil society actors, diplomats and other officials from Western Sahara, Palestine and other countries, as well as participant observation of side events in the UN Human Rights Council were conducted in 2017–2018. Quotations are included here with the sources' consent.

[3] A resolution on the crime of aggression was adopted at the 2010 plenary meeting of the International Criminal Court in the framework of the Kampala Review Conference of the Rome Statute (International Criminal Court 2010).

[4] Colonialism or more specifically settler-colonialism has also been employed as a framework for discussing both cases; see for instance Khoury 2011, Zunes and Mundy 2015, Greenstein 2016, and for the conceptualisation of settler colonialism, see Wolfe 1999 and Veracini 2010.

[5] Western Sahara features at the top of the UN list at: www.un.org/en/decolonization/nonselvgovterritories.shtml.

[6] For records of the plans, see the UN Security Council report at: www.un.org/en/sc/repertoire/89-92/Chapter%208/AFRICA/item%208_Western%20Sahara_.pdf.

[7] The 1907 Hague Regulations and 1949 Fourth Geneva Convention outline the occupying powers' obligations and the practices that constitute war crimes in that supposedly temporary situation. Article 42 of the Hague Regulations defines that 'a territory is considered occupied when it is actually placed under the authority of the hostile army.'

[8] Examples of publicized debates on strategy abound. For Palestine's case, see: 'Open forum: Strategizing Palestine' in *Journal of Palestine Studies* 35(3): 37–82; and for Western Sahara's case, see: 'Sahara Rise Manifest' in *Sahara Rise International Conference for Civil Resistance*, 25th to 27th February 2018.

[9] For more on the session, see: www.un.org/press/en/2017/gacol3311.doc.htm.

[10] To have consultative status with ECOSOC and get accreditation to participate in various agencies' events and procedures, organisations must apply and submit documents that include their certificate of registration issued by a governmental authority, see: <http://csonet.org/?menu=34>.

[11] Cheikha Abdalahe is a Sahrawi human rights activist living in Spain who frequently participates in many international fora. The statement that she made at the side event was written down by me and is reproduced here with her consent.

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