

Contested Statehood, Ambiguities and Volatility: The Effects of Lawfare and Warfare in the Western Sahara Conflict

Irene Fernández-Molina

Introduction

The long-frozen conflict over Western Sahara has thawed and heated up since late 2020. Back then, it was stirred up by a spiral of destabilization on the ground, with the return of armed confrontation after three decades of ceasefire, and also on the regional and international scale, with the shock waves sent by US President Donald Trump's proclamation of recognition of Moroccan sovereignty over the territory. The berm dividing the western three-quarters of Western Sahara annexed by Morocco and the eastern strip controlled by the Polisario Front has thereafter been witnessing what the UN describes as 'low-intensity hostilities'.

This chapter examines the ambiguity and volatility associated to contested statehood by looking at the intersection between politics, law and violence in the case of Western Sahara. It will start by discussing the political, analytical, and legal grey areas that surround both Western Sahara as a territory and the Sahrawi Arab Democratic Republic (SADR) as a contested state. Such ambiguities include the SADR's outlier position as a non-secessionist contested state whose people enjoy a widely accepted right to self-determination. This is also an entity that operates as a hybrid between a state-in-exile and a *de facto* state, with the ensuing strengths and weaknesses of its statehood claim from constitutive and declaratory perspectives. A third duality concerns the relationship between the international legal regime applied by default to this territory and conflict, namely decolonization law

based on the right to self-determination, and international humanitarian law including the law of occupation. The chapter will subsequently focus on the agency displayed in tandem by SADR and the Polisario Front – the national liberation movement internationally recognized as the representative of the Sahrawi people – in order to counter their own vulnerability, the asymmetry of the conflict, and international conflict management ambiguities in international conflict management that are detrimental to their interests. Such agency has materialized in new strategies of lawfare (legal activism) and warfare that the Polisario Front/SADR have pursued since the mid-2000s and 2020, respectively. The former has sought to hold the EU institutions accountable for the existing territorial undifferentiation practices in their economic relations with Morocco – the *de facto* inclusion of Western Sahara in all EU–Morocco bilateral cooperation agreements – while the latter has led to the return to armed struggle in the hope of drawing red lines, regaining international attention, and unblocking an ever-stalled conflict resolution process

Ambiguities

Both Western Sahara as a territory and the SADR proclaimed in 1976 by the Polisario Front display significant elements of ambiguity at the political, analytical and legal levels. To start with, as all the cases examined in this book, the dispute over the status of such piece of land appears as a conflict in the ‘grey zone’ of statehood (see the Introduction of this volume). From a political science and international relations (IR) perspective, the SADR fits comfortably in the broad and variegated category of ‘contested states’ given the ‘internationally contested nature of [its] purported statehood’ (Geldenhuys 2009: 3). It also shares a number of features with the narrower group of ‘*de facto* states’, including the definitional conditions of having an organized political leadership that enjoys popular support, the capacity to provide governance to a certain population, the self-assigned capacity to enter into relations with other states, and the aim to achieve widespread international recognition of its sovereignty (Pegg 1998: 26). The same applies with some nuances to the usual conceptualizations of ‘unrecognised states’ (Caspersen and Stansfield 2011; Caspersen 2012) and ‘quasi-states’ (Kolsto 2006).

However, in a comparative light, the SADR is at most an outlier or a hybrid in relation to – if not outright excluded from – the last three overlapping categories. This is because of three fundamental reasons. First, the contestation of statehood here does not stem from secessionism but from foreign occupation by a legally separate neighbouring state in the context of a thwarted decolonization and self-determination process. Second, the SADR has not achieved *de facto* independence in as much as it does not

exercise effective rule over the territory it claims (Kolsto 2006: 725–726; Caspersen 2012: 8). This is due to Morocco's *de facto* control over and formal annexation of three-quarters thereof upon its two-step takeover in 1975–1976 (following Spain's withdrawal) and 1979–1980 (following Mauritania's withdrawal from the southern part). As a result, the SADR operates on a primarily extraterritorial basis, as a state-in-exile (Wilson 2016: 10; see also McConnell 2016), from the Sahrawi refugee camps near Tindouf in south-western Algeria. Third, the SADR has not been overall 'unable to achieve any degree of substantive recognition' from the international society (Pegg 1998: 26). Since its foundation it has been recognized by 84–85 UN member states, and at present it maintains diplomatic relations with around 40 of them. This substantial, if partial, degree of international recognition reflects its sheltering by the principle of self-determination. Altogether, the combination of a widely accepted right to self-determination, foreign occupation, and extraterritoriality accentuates Western Sahara and SADR's position as a borderline case of contested statehood, showing some specific parallels solely with Palestine. Such conditions have mixed effects on the SADR's sovereignty and statehood claims referring to the constitutive and declaratory theories of state recognition in international law (Crawford 2006; Oeter 2015).

On one hand, SADR's hand is significantly stronger than that of than typical secessionist contested states from a constitutive perspective – i.e. based on external legitimacy and collective endorsement – due to its enjoyment of 'titular recognition', defined as the 'wide formal acceptance (at multilateral level) of an entity's *right* of or title to statehood' (Geldenhuy 2009: 25, emphasis in original). Here, such an entitlement relies on the principle of self-determination. Titular recognition stems from the UN's designation of colonial Spanish Sahara as a non-self-governing territory in 1963, which entailed an UN General Assembly demand for Spain, the administering power, to arrange 'a referendum under [UN] auspices with a view to enabling the indigenous population of the Territory to exercise freely its right to self-determination' (A/RES/2229(1966)). The fact that the Madrid regime delayed and eventually abandoned plans to hold such referendum – as Spain irregularly withdrew from the territory transferring its administration to Morocco and Mauritania in November 1975 – pushed the Polisario Front to proclaim the SADR's independence in February 1976, referring to UN General Assembly resolution 1514 (Polisario Front 1976). Due to this unique genealogy and firm grounding in decolonization law, while self-determination through a referendum was deferred and remains yet to be realized today, the SADR's declaration of independence was not generally regarded as challenging international legality or a majority of the international community. This is what sets this case of contested statehood apart from breakaway entities, and completely turn the tables regarding

what Krasner (1999) calls ‘international legal sovereignty’. Furthermore, in practice, the added layer of ambiguity posed by the apparent contradiction between the Western Sahara territory’s non-self-governing status and the SADR’s statehood claim has been more of an asset than a problem for the Polisario Front/SADR ‘state-movement’ duo (Wilson 2016), which have mobilized one or another depending on contexts, audiences, and their respective roles. While the Polisario Front has always enjoyed much wider international recognition as a national liberation movement, the proclamation of the SADR allowed most notably for its admission into the Organization of African Unity (OAU) as a full-blown member state in 1982.

On the other hand, going back to doctrinal legal approaches to statehood, the SADR’s prevailing extraterritoriality, while not being absolute given its control over the so-called ‘liberated zone’ comprising the easternmost 25 per cent of Western Sahara, still substantially weakens its statehood according to the functional or effectiveness criteria prioritized by the declaratory theory. The SADR has an overall reduced ability to exercise actual ‘domestic sovereignty’ and ‘Westphalian sovereignty’ (Krasner 1999) in Western Sahara itself. Regardless, elements of declaratory statehood have been consciously cultivated and invoked by the SADR leadership. Making a virtue of necessity, their broad strategy regarding the state-in-exile vs *de facto* state and constitutive vs declaratory statehood ambiguities has been to try and have it both ways.

In the domain of international law, besides the implications of the SADR’s political hybridity between a state-in-exile and a *de facto* state, there are also some further ambiguities as to the status of and the regime applicable to the territory this contested state claims, i.e. Western Sahara (Fernández-Molina and Ojeda García 2020: 86). The fundamental, unchanged international consensus and UN position since the 1960s is that the former Spanish colony constitutes a non-self-governing territory subject to decolonization law and pending the fulfilment of its people’s right to self-determination. On this point, a noteworthy element of exceptionality and controversy is the lack of indication of who is Western Sahara’s administering power on the UN list of non-self-governing territories, since Spain declared itself ‘exempt from any responsibility of any international nature in connection with the administration of the Territory’ in early 1976.¹ Yet, the Polisario Front/SADR, along with an important number of legal scholars and a 2014 decree from the Spanish National Court (Audiencia Nacional), maintain that, while not *de facto*, Spain continues to be the *de jure* administering power due to the legal nullity and no effect of the 1975 Madrid Accords (Kassoti

¹ See the UN official webpage on Non-Self-Governing Territories: www.un.org/dppa/decolonization/en/nsgt.

2017b: 33). The African Union and its special envoy for Western Sahara Joaquim Chissano have also advocated this position in the past decade. The opposing view contends that Morocco should be acknowledged as the *de facto* administrator of the territory (Torres-Spelliscy 2014: 236) – as done explicitly at times, most notably, by EU representatives (Fernández-Molina 2017: 221, 224; see below).

The second legal ambiguity concerns the international legal regime(s) applicable to the Western Sahara territory and the conflict over it. The prevailing consensus prioritizes their falling under the framework of decolonization law based on the right to self-determination (Articles 73–74 of the UN Charter on non-self-governing territories as well as the two UN human rights covenants of 1966). In addition, regarding the past and present hostilities, the self-determination element entitles Western Sahara to be treated as an international armed conflict (IAC) for the purposes of international humanitarian law – unlike most wars pitting (secessionist) *de facto*/contested states against their parent states, which are regarded as non-international armed conflicts (NIACs). This extends the rights and protections of *jus in bello* to Western Sahara's civilian population and those fighting on its behalf in the exercise of their right to self-determination, who are considered as lawful combatants and enjoy, among other things, the guarantees attached to the prisoner of war status (Introduction to this volume; see Additional Protocol I to the Geneva Conventions of 1977). This categorization and recognition from international humanitarian law reduces the legal vulnerability of the Polisario Front, and the so-called Sahrawi People's Liberation Army in particular. For this reason, in 2015 the Polisario Front made a unilateral declaration committing itself to apply to the Western Sahara conflict the four Geneva Conventions and Protocol I, as enabled by Article 96.3 of the latter (Swiss Federal Department of Foreign Affairs 2015).

However, in the policy practice, international humanitarian law has been invoked to a very limited extent in the most significant UN documents dealing with the Western Sahara conflict: resolutions from the Security Council and reports of the secretary-general. This seems a logical consequence of the scarce attention and number of documents devoted by the UN to this issue during the years of open warfare (1996–1991) and especially until 1983 – the year when Morocco consolidated its military control over the annexed territory and the intensity of armed combat substantially decreased to a below-war level of fatalities.² Instead, the OUA was the international organization that took the lead in peace-making efforts

² See Correlates of War (COW) War Data, 1816–2007 (v4.0) (<https://correlatesofwar.org/data-sets/cow-war/>).

during this first stage of the war. The UN only took over the process in the late 1980s (Zunes and Mundy 2022: 174–180). As a result, aside from three resolutions passed in October–November 1975, at the time of the Moroccan invasion of the territory (S/RES/377[1975]; S/RES/379[1975]; S/RES/380[1975]), the first UN Security Council intervention on this matter dates back to September 1988 (S/RES/621). The first UN secretary-general report is from June 1990 (S/21360[1990]).

Since that time, references to international humanitarian law in UN Security Council resolutions on Western Sahara have focused exclusively on the release of prisoners of war. Interestingly, this was one of the measures for the post-ceasefire ‘transitional period’ under the UN Settlement Plan accepted by Morocco and the Polisario Front in 1991, which became the primary framework of reference – rather than international humanitarian law – in the 1990s. For example, in its resolution from May 1996, the Council

[called] upon the parties, as a demonstration of good will, to cooperate with the United Nations in the implementation of certain aspects of the Settlement Plan, such as the release of Saharan political prisoners and the exchange of prisoners of war on humanitarian grounds, as soon as possible, to accelerate implementation of the Settlement Plan in its entirety. (S/RES/1056[1996])

However, the Polisario Front delayed this step arguing that the United Nations was not implementing the other Settlement Plan measures for the ‘transitional period’ – a refusal that deepened in the early 2000s as preparations for the self-determination referendum were abandoned and the United Nations attempted to broker a ‘political solution’ through the Baker Plans I (2001) and II (2003) (Besenyő, Huddleston and Zoubir 2023: 28–29). It was as a result of this shift that, between 2002 and 2005, the UN Security Council calls for the Polisario Front to ‘release without further delay all remaining prisoners of war’ started to be justified ‘in compliance with international humanitarian law’ (S/RES/1429[2002]; S/RES/1495[2003]; S/RES/1598[2005]; S/RES/1634[2005]).

In the case of the reports of the UN secretary-general on the Western Sahara conflict, references to international humanitarian law have a similarly narrow focus on the issue of prisoners of war – with two strong appeals for the Polisario Front to release them ‘in compliance with international humanitarian law’ in January and April 2005 (S/2005/49; S/2005/254), the year when this issue was eventually settled – as well as on ‘persons unaccounted for in the conflict’. All reports since 2014 have included, under the section covering humanitarian activities and human rights, a brief point highlighting the International Committee of the Red Cross’ continuing work on ‘cases of persons still unaccounted for in relation to the past hostilities’.

On the other hand, the specific – and politically most sensitive – branch of international humanitarian law that is hardly mentioned in the UN discourse on Western Sahara is occupation law, including instruments such as the Hague Regulations annexed to the 1907 Hague Convention respecting the Laws and Customs of War on Land, the 1949 IV Geneva Convention relative to the Protection of Civilian Persons in Time of War and Additional Protocol I to the latter (see [Saul 2015](#)). The UN General Assembly described the presence of Morocco in Western Sahara as ‘occupation’ in two successive resolutions following Mauritania’s withdrawal from, and Morocco’s takeover of, the southern half of the territory in 1979 and 1980. These resolutions referred, in particular, to ‘the continued occupation of Western Sahara by Morocco and the extension of that occupation to the territory recently evacuated by Mauritania’ (A/RES/34/37[1979]; A/RES/35/19[1980]). Yet, since then, there has been no consideration of Western Sahara as a matter of occupation and annexation at the UN level, including both the General Assembly – the only body that has kept passing resolutions annually on this question – and the Security Council ([Smith 2020](#)). This suggests a gradual international coming to terms with facts on the ground, or at least dwindling consensus and firmness on the unacceptability of Morocco’s position since the consolidation of its military control in 1983. Even the influential legal opinion on Western Sahara delivered by UN Under-Secretary for Legal Affairs Hans Corell in 2002 (see below) failed to refer to occupation law.³

The extent to which the term ‘occupation’ has become pretty much a taboo for the United Nations was demonstrated by the unprecedented diplomatic crisis unleashed when, as an exception and maybe in a slip of the tongue, Secretary-General Ban Ki-moon used the word during a visit to the region in March 2016 ([UN Secretary-General 2016a](#)). Outraged, Morocco accused the United Nations of abandoning its ‘neutrality, objectivity and impartiality’. The Rabat government stated it ‘[noted] with astonishment that the Secretary General used the term “occupation” to qualify Morocco’s recovery of its territorial integrity, which deviates drastically from the terminology traditionally used by the UN’ ([MAP 2016](#)), and expelled most of MINURSO (United Nations Mission for the Referendum in Western Sahara) civilian staff from Western Sahara in response ([Fernández-Molina and Porges 2019](#): 384). In what seemed a rectification, the secretary-general then went back to the usual UN line stressing that ‘the status of the Western Sahara territory remains to be decided, as it is a non-self-governing territory’ ([UN Secretary-General 2016b](#)).

In fact, besides the broader question as to who determines whether there is a foreign occupation, the avoidance of occupation law in this case in not

³ Similarly, the CJEU has not considered this branch of law in any of its judgments.

the result of any legal incompatibility or mutually exclusive relationship with decolonization law. Most international legal scholars agree that ‘Western Sahara is also a non-self-governing territory, akin to colonies, but that does not change its status as occupied’ (Wrange and Helaoui 2015: 40; see also Soroeta Licerias 2014; Kassoti 2017a: 352; 2017b: 29; Besenyő, Huddleston and Zoubir 2023: 87–89). Likewise, at the African Union level, a judgement of the African Court on Human and Peoples’ Rights (2022) emphasized that ‘both the UN and the AU recognize the situation of SADR as one of occupation and consider its territory as one of those territories whose decolonisation process is not yet fully complete’. In other words, the limited UN and Western treatment of Western Sahara as a case of occupation is first and foremost a consequence of the international politics and the deep asymmetry of the conflict. These international actors opt for the default, less controversial position prioritizing the decolonization legal framework in order to avoid alienating the stronger conflict party, Morocco. By contrast, the Polisario Front/SADR have consistently asserted that Western Sahara is a matter of both decolonization and occupation law, and that Spain remains the territory’s *de jure* administering power. These are matters on which clarity plays in their favour.

Lawfare

One way in which the Polisario Front/SADR has strived to counter such asymmetry and dispel some of the legal ambiguities surrounding the conflict, since the turn of the millennium has been by resorting to a type of legal activism that may be viewed as lawfare. As the implementation of the UN Settlement Plan and the conflict resolution process stalled, two problematic side effects of Western Sahara’s protracted occupation and annexation came to the fore: Morocco’s human rights violations and economic exploitation of its natural resources (Fernández-Molina 2019a). There lay the basis for a new Sahrawi ‘low politics’ international strategy (Fernández-Molina 2017). Much of this has been pursued through parliamentary and judicial routes, by using legal instruments ‘as a substitute for traditional military means’ (Dunlap 2008: 146) to achieve political or operational goals in a conflict context, which fits into a descriptive and non-normative concept of lawfare. Introduced into the legal and IR scholarship in the early 2000s following a winding and contradictory conceptual journey,⁴ in its value-neutral understanding – deprived of the connotations of illegitimacy prevalent in other contexts – lawfare is

⁴ See Werner (2010) for a critical reconstruction of this evolution and discussion of the problematic aspects of normative and non-normative uses of the term.

simply defined as the ‘use of law as a weapon of war’ (Kittrie 2016: 1). That makes it particularly suitable to refer to legal activism in a context of armed conflict.

As an additional element relevant to the case here, US administrations in that decade started to increasingly regard, and decry, lawfare as a ‘strategy of the weak’ in the hands of victim groups, human rights advocates and government critics (Werner 2010: 68–69). Whatever its ends and targets, being less deadly, less costly, and yet sometimes more effective than conventional warfare, lawfare appears as a particularly attractive tool for disempowered conflict actors. According to Kittrie (2016: 41), if asymmetric warfare consists of ‘attempts to circumvent or undermine an opponent’s strengths while exploiting his vulnerabilities using methods that differ significantly from the opponent’s usual mode of operations’ – for example, guerrilla warfare, terrorism, and cyberwarfare – then lawfare may well be considered a ‘subset’ thereof. As such, the types of actors that typically wage instrumental lawfare include contested states, non-governmental organizations (NGOs), and advocacy networks, such as the Palestinian Authority and Palestinian and allied NGOs (Kittrie 2016: 11–12; see also Castan Pinos and Friis Hau 2023).⁵

In the case of Western Sahara, the main target of Sahrawi lawfare has been the European Union (EU), whose manifold bilateral economic and sectoral cooperation agreements with Morocco have for decades failed to make any differentiation between the internationally recognized territory of this country and that of Western Sahara – thus including the latter by default within their scope. The Polisario Front/SADR and NGOs such as Western Sahara Resource Watch (WSRW) started to challenge such territorial undifferentiation practices following in the steps of Palestinian strategies, and encouraged by the groundbreaking 2002 ‘Corell opinion’ on contracts between Morocco and foreign companies to explore for mineral resources in the annexed territory. The most consequential points of this UN legal opinion were the conclusions that the people of Western Sahara legally retain ‘permanent sovereignty over natural resources’ and therefore, ‘if further exploration and exploitation activities were to proceed in disregard of the interests and wishes of the people of Western Sahara, they would be in violation of the international law principles applicable to mineral resource activities in Non-Self-Governing Territories’ (UN Security Council 2002; see Hagen 2015: 379).

⁵ Attempts to draw a conceptual line between lawfare and ‘legal mobilization’ – where the former denotes illegitimate legal instrumentalism that ‘sustains hegemonic power’ whereas the latter refers to the ‘legitimate use of the law by rights claimants to advance human rights and social justice’ – have not gone uncontested (Matthews 2023: 27–28).

Upon this new normative basis, a novel lobbying campaign of the Polisario Front/SADR and WSRW with the European Parliament resulted in the latter's rejection, in December 2011, of the protocol of extension of the 2006 EU–Morocco fisheries agreement on the legal grounds, among other arguments, that it included Western Sahara's waters without its direct benefits for the local population having been sufficiently demonstrated (Fernández-Molina 2017; Bouris and Fernández-Molina 2018: 317). However, the limits of the parliamentary route became soon apparent, as in 2012 and 2013 the same European Parliament gave its consent to the 2010 EU–Morocco agricultural trade agreement (Council of the EU 2012b) and a revamped fisheries protocol (EU–Morocco 2013) despite the fact that both deals continued to automatically include Western Sahara's territory. EU normative change was aborted and ambiguity persisted at this point: 'There was no cascade of the budding territorial differentiation norm, and no change whatsoever in the domain of practices' (Bouris and Fernández-Molina 2024: 9). At the time, though, undifferentiation seemed more of a default set of practices – the result of intergovernmental influence, institutional path dependence and the inability to formulate a coherent joint position – than of a fully deliberate EU policy.

This pushed Sahrawi actors to focus their lawfare on the judicial route, initiating a number of legal actions at the Court of Justice of the EU (CJEU) from 2012 onwards. Such strategy, which was formally led by the Polisario Front because of the national liberation movement's recognition by the UN General Assembly as 'the representative of the people of Western Sahara' (A/RES/34/37(1979)), would prove to be highly fruitful. As a result, firstly, after admitting the Polisario Front's legal personality and capacity to bring proceedings before EU courts – in an example of the politics of international courts navigating and adjudicating tricky status questions – the CJEU annulled the EU–Morocco agricultural trade agreement in so far as it applied to Western Sahara due to the Council's failure to examine whether the exploitation of the territory's natural resources was 'likely to be to the detriment of its inhabitants and to infringe their fundamental rights' (Court of Justice of the EU 2015). Secondly, in the final ruling on the same case one year later, the CJEU modified its previous judgment to specify that, more fundamentally, Western Sahara has a 'separate and distinct status' and hence, in order for its inclusion in EU–Morocco agreements to be legal, 'the people of Western Sahara must be regarded as a "third party"' from which the implementation of the agreement 'must receive the consent' (Court of Justice of the EU 2016; see Ferrer Lloret 2017: 21; Flavier 2017: 4; Kassoti 2017a: 340; Kalimo and Nikoleishvili 2022: 378–384). Thirdly, in February and July 2018, two further CJEU rulings on two separate cases concluded, for the same reasons, that the EU–Morocco fisheries agreement is valid in itself but not applicable to the waters adjacent to the territory of Western

Sahara (Court of Justice of the EU 2018a; Court of Justice of the EU 2018b). Fourthly, in November of the same year, the CJEU likewise decided that the EU–Morocco Aviation Agreement should not cover Western Sahara either (Court of Justice of the EU 2018c).

In sum, from late 2015 we started to see a swift norm cascade that dispelled ambiguity and consolidated Morocco–Western Sahara territorial differentiation through accumulating case-law within the EU judiciary. The success of Sahrawi lawfare as a form of asymmetric struggle was demonstrated by its capacity to trigger an unheard-of three-year diplomatic crisis between Rabat and Brussels. In February 2016, Rabat announced the suspension of all contacts with the EU institutions in protest of the ‘highly political nature’ and the ‘biased logic’ of the first CJEU ruling on this matter (Royaume du Maroc 2016). On the other hand, the reach of the norm cascade was limited at the EU’s inter-institutional level, given the European Commission and Council’s reluctance to further alienate Morocco by putting territorial differentiation down on paper and into practice. During the new negotiations on the CJEU-required adaptations of the EU–Morocco agricultural trade and fisheries agreements’ protocols in 2017 and 2018, the Commission and the European External Action Service (EEAS) conducted consultations with a range of stakeholders from Moroccan-annexed Western Sahara so as to claim they had secured the ‘consent’ of ‘concerned populations’ – though the Polisario Front and pro-independence Saharawi civil society organizations declined to participate in what they saw as a prejudiced process against their interests (Court of Justice of the EU 2021). At this point it became evident that the EU executive institutions’ continuing ambiguity on the status of Western Sahara had turned into a policy by design which put the stability of relations with Morocco first.

In formally acknowledging the CJEU rule, the most recent agricultural trade and fisheries deals – passed by the European Parliament in February and March 2019 respectively – significantly reduced the EU’s ambiguity on the status of the territory of Western Sahara *on paper*. Both the EU and Morocco stated in accompanying exchanges of letters that these agreements had been concluded ‘without prejudice to the respective positions’ (EU–Morocco 2019a), including an EU reference to Western Sahara as a ‘non-self-governing territory’ with the ‘right to self-determination’ under international law (EU–Morocco 2019b). At the same time, *in practice*, the purpose remained that the existing territorial undifferentiation stay unchanged, for example that agricultural ‘products originating in Western Sahara subject to controls by customs authorities of the Kingdom of Morocco [...] benefit from the same trade preferences as those granted by the EU to products covered by the Association Agreement [with Morocco]’ (EU–Morocco 2019a; see also Suárez-Collado and Contini 2022). In fact, the CJEU was to again annul the two agreements in September 2021, arguing that the EU consultations

with ‘concerned populations’ did not amount to a legally valid expression of the ‘consent’ of the ‘people’ of Western Sahara based in these two terms’ definitions in international law, and that the criterion of the benefits for the populations concerned could not replace such consent ([Court of Justice of the EU 2021](#)). Despite the clarity gradually achieved since 2015, legal uncertainty and lawfare over Western Sahara still had a long way to go ahead.

Volatility and warfare

In parallel to Sahrawi lawfare, in late 2020 escalating tensions on the ground, coupled with destabilization at the regional and international levels, resulted in a violent thawing of the long-frozen conflict of Western Sahara. Hostilities between the parties resumed after nothing less than 30 years of compliance with the 1991 ceasefire. This demonstrates the extent to which volatility is inherent to contested statehood. Contested states remain highly volatile and prone to quick escalation even after periods of calm and apparent compromise. In addition, from the perspective of the Polisario Front/SADR, the return to armed struggle has been largely a strategic choice seeking, like lawfare, to counter a perceived growing asymmetry, and ambiguities in the international engagement with this conflict that are detrimental to their position. The intersection between ambiguities, volatility, and warfare may be observed by reconstructing three major developments on the local, international, and regional levels: the crisis at the border crossing of Guerguerat in October–November 2020, the US proclamation of recognition of Moroccan sovereignty over the territory in December 2020 and the breakdown of diplomatic relations between Algeria and Morocco in August 2021.

The Guerguerat crisis started with a Sahrawi civilian protest that blocked a section of road crossing the UN-monitored demilitarized buffer strip between the far south of Moroccan-annexed Western Sahara and Mauritania. This was eventually suppressed through a Moroccan military operation beyond the dividing line – and thus in breach of the terms of the ceasefire – which in turn led the Polisario Front/SADR to declare the end of its commitment to such ceasefire ([International Crisis Group 2021](#): 1–2). Three key decisions intervened in this escalatory process.

Firstly, the Polisario Front/SADR’s call for a sustained protest that disrupted Moroccan–Mauritanian land traffic and transport may be understood as stemming from a combination of rational choice and a more desperate, existential struggle for international visibility in a context in which Morocco appeared to be winning on nearly all fronts. This also coincided with the years following a turnover in the Sahrawi national leadership, after the passing of the four-decade Polisario Front secretary-general and SADR president, Mohamed Abdelaziz, and his replacement by Brahim Ghali in July 2016.

The negative picture for Sahrawi nationalists at the time was to a large extent a product of the UN Security Council resolutions' creeping ambiguity as to the centrality of self-determination and a referendum for the resolution of the Western Sahara conflict, as well as about which were exactly 'the parties and neighbouring states' among the four participants in the Geneva process, that is, the UN-convened negotiations that took place in 2018–2019 between Morocco, the Polisario Front, Algeria, and Mauritania (S/RES/2548[2020]). By avoiding clarity about the status of Algeria and Mauritania in those roundtable talks, the latest UN Security Council resolutions were contributing to blurring the conflict's internationally recognized two-party structure and thereby played in the hands of Morocco, which views this as a primarily regional confrontation with rival Algeria. This muddling was coupled with the anomalously long vacancy of the post of personal envoy of the secretary-general for Western Sahara since Horst Köhler stepped down in May 2019 – a vacuum that the Polisario Front/SADR also perceived to be against its interests – and the end of the dynamism of the Geneva process following Trump's firing, in September 2019, of US National Security Advisor John Bolton – who had shown an extraordinary level of personal investment in this issue (Fernández-Molina 2019b; Besenyő, Huddleston and Zoubir 2023: 70–73). The Polisario Front/SADR's attention-seeking and threats of resuming armed struggle had intensified in the face of all these adverse developments.

Secondly, another crucial contributing factor to escalation in late 2020 was the Moroccan decision to clear the Sahrawi protest by military force and crossing the ceasefire line (i.e. violating military agreement No. 1 between MINURSO and each the two conflict parties).⁶ This involved ruling out a more restrained approach such as the one followed in a previous border crisis in Guerguerat between August 2016 and February 2017, which ended with Morocco's unilateral withdrawal from the buffer strip at the UN secretary-general's request (S/2017/307: 1–3). Morocco's new brinkmanship was driven by an unprecedented self-perception of strength and foreign policy assertiveness. In addition to the UN-level developments described above, Rabat felt empowered by its success in securing membership of the African Union in January 2017 – putting an end to over three decades of absence from pan-African regionalism with the ultimate aim of neutralizing diplomatic support for the SADR in this organization, if not in getting the SADR expelled thereof – the weakening of Algeria's rival regional influence due to the negative impact of the large-scale domestic unrest caused by the Hirak protest movement, as well as Morocco's reconciliation with the EU, in its

⁶ See the MINURSO page of ceasefire monitoring (<https://minurso.unmissions.org/ceasefire-monitoring>).

own terms, after the 2016–2019 bilateral crisis caused by Sahrawi lawfare. Last, but not least, the longstanding international consensus on avoiding any diplomatic presence in the annexed Western Sahara territory to signal the formal non-recognition of Morocco's sovereignty claims was shaken by a wave of openings of 16 African and two Arab consulates in the cities of Laayoune and Dakhla between December 2019 and December 2020 ([International Crisis Group 2021](#): 6–7). In the wake of such accumulating diplomatic gains, Rabat's military operation in Guerguerat sought to establish new facts on the ground, including its full control over this strategic border crossing point and the development of new logistic infrastructure.

Thirdly, and finally, in response to the Moroccan violation of the ceasefire, on 14 November 2020, the Polisario Front/SADR issued a decree declaring the end of its commitment to such an agreement and the 'consequent resumption of armed struggle' (S/2021/843: 1–3). This decision had the strategic goal of raising the conflict's international profile by reverting to a state of 'war'. A good deal of rhetorical entrapment as well as domestic legitimacy and mobilization needs were also arguably involved. Indeed, since the Guerguerat crisis, the Polisario Front/SADR has maintained that the entire territory of Western Sahara has become a 'zone of open war'. This contrasts with denial declarations on the side of Rabat. The same strategic motivations that encourage Sahrawis to disseminate a 'state of war' narrative in front of international diplomats and media lead Morocco to pretend the 'total absence of any armed conflict' (S/2021/843: 3, 6). The latter calculated ambiguity seems to be actually in line with a broader pattern. As argued by [Fazal \(2018: 5–6\)](#), the development of international humanitarian law over the twentieth century has disincentivized recognized states from declaring war, which entails an expectation of compliance with rising legal standards, while belligerents such as secessionist rebel groups remain eager to abide by the laws of war as part of their search for international legitimacy and recognition of statehood. According to the United Nations, the reality of the past five years has been a situation of sustained 'low-intensity hostilities' and regular reports of 'shots fired across the berm' by both parties. The UN secretary-general's report on Western Sahara of October 2021 further specified that, 'according to MINURSO calculations based on reporting by the parties, the incidence of reported firing has decreased since January [2021] and has primarily been concentrated in the north of the Territory near Mahbas' (S/2021/843: 3). On the other hand, the October 2022 report mentioned a growing number of Moroccan drone strikes 'east of the berm' (18 reported over the previous year) (S/2022/733: 7), which hit Algerian civilian trucks in addition to Sahrawi targets.

An additional complicating factor at the international level, less than one month after the resumption of hostilities, was the US presidential proclamation recognizing 'Moroccan sovereignty over the entire Western

Sahara territory' (White House 2020). This came as part of a trilateral transactional deal brokered by the Trump administration whereby, in exchange for Washington's concession, Rabat committed itself to normalizing its bilateral relations with Israel⁷ following in the steps of the Abraham Accords concluded by United Arab Emirates, Bahrain, and Sudan. The unilateral US recognition, which deviated from the international/UN consensus and legal parameters on this conflict, constituted a diplomatic victory without comparison or precedent for Morocco – the achievement of its longstanding top foreign policy priority – and created the expectation in Rabat that other Western countries would follow suit shortly. These maximalist hopes turned soon into frustration, resulting in severe destabilization of Morocco's bilateral relations with key European states such as Germany, Spain, and France, which were subject to unparalleled pressure to shift their position on Western Sahara. Rabat recalled its ambassadors to the first two countries in May 2021 (MAP 2021a; 2021b), and furthermore orchestrated a 'coercive engineered migration' crisis (Greenhill 2010) by allowing some 10,000 migrants to cross the border into the Spanish North African city/enclave of Ceuta later in the same month (Economist 2021).

Finally, the breakdown of relations between Algeria and Morocco in August 2021 was both a byproduct and an accelerator of mounting instability on the regional scale. It occurred in the context of Algiers' anxiety about both the US recognition of Western Sahara's Moroccanness and the Moroccan-Israeli rapprochement, the latter of which was depicted as a direct threat to Algerian national security. This state's decision to cut diplomatic ties itself was officially justified by a long list of grievances (APS 2021), chief among which was Morocco's abandonment of its 1988 commitment (stated in a joint communiqué with Algeria) to support 'a just and final settlement to the conflict over Western Sahara through a proper and free referendum on self-determination' (UN General Assembly 1988). On the other hand, its timing suggested a different, non-Western Sahara-related trigger, i.e. Rabat's perceived interference in Algerian domestic affairs and support for the self-determination of the Kabylie – or the Movement for the Self-determination of Kabylie (MAK) – which a Moroccan diplomat had indeed provocatively stated in a document distributed in a previous Non-Aligned Movement UN meeting. In any case, as put by the UN secretary-general's 2021 report: 'Neighbouring states have a vital role in the achievement of a solution to the question of Western Sahara. In this connection, the deterioration in relations between Morocco and Algeria is of concern' (S/2021/843: 14).

⁷ See Trump tweets on X (<https://twitter.com/realDonaldTrump/status/1337067019385057290> and <https://twitter.com/realDonaldTrump/status/1337067073051238400>).

Going back to the ongoing hostilities between the Polisario Front/SADR and Morocco, it is worth considering their further implications for the ambiguities surrounding the conflict, especially in legal terms. This remains a grey-area situation in itself, in that only one of the parties acknowledges and strives to overstate the level of armed confrontation while the other one keeps it quiet. With the UN peacekeeping mission MINURSO's freedom of movement and ability to observe the situation in the territory increasingly curtailed by the two parties, independent monitoring has been very limited. In any case, there is sufficient evidence of two new developments in Rabat's operational strategy that may, in the long run, contribute to reshaping the conflict in both spatial/geopolitical and legal terms: the willingness to establish new facts on the ground including through territorial expansion since the Guerguerat crisis and the (unacknowledged) attacks against targets in the strip controlled by the Polisario Front/SADR. If prolonged, these trends suggest a Moroccan ambition to assert control over a larger part or the entirety of the territory of Western Sahara, including the so-called 'liberated zone' currently in Sahrawi hands – which would deprive the SADR of its limited *de facto*, declaratory statehood, turning it closer to a full-blown state-in-exile.

Regarding the duality between decolonization law and international humanitarian law, the secondary place that the latter has occupied in the UN approach to the Western Sahara conflict since the late 1980s could be questioned in the event of more widespread and systematic targeting of civilians or escalation to large-scale war. Such a scenario of intensified warfare would raise issues concerning the distinction between combatants and non-combatants, the prohibition of deliberately targeting the latter, the treatment of potential new prisoners of war, and the prohibition of certain types of weapons. Whether the application of international humanitarian law to Western Sahara would then remain limited to its impartial and status-neutral humanitarian aspects, or furthermore bring occupation law back to the forefront, is an open question.

Conclusion

This chapter has unpacked the manifold political and legal ambiguities that surround contested statehood and conflict in Western Sahara, expounding how these have generally acted as sources of vulnerability for the Polisario Front/SADR and the Sahrawi people, but also elicited strategic responses from these disadvantaged actors in the form of lawfare (legal activism) and warfare. In this sense, as argued by [Kittrie \(2016: 41\)](#), these two avenues of agency may be seen as 'mutually reinforcing' forms of asymmetric conflict. That being said, their effects may differ and even contradict each other depending on the level of analysis and the time frame considered.

The Sahrawi lawfare currently appears as more successful internationally yet also more of a long-term effort, while warfare may meet more immediate domestic needs for the Polisario Front/SADR leadership. Furthermore, consequences are certainly divergent in terms of the volatility engendered.

As a way of conclusion, it is worth recapping what this case of contested statehood tells us about the relationship between ambiguity, vulnerability, and agency. On one hand, there are a number of political ambiguities that the Polisario Front/SADR has strategically assumed, if not capitalized on, over the course of this conflict. Making a virtue of necessity, the SADR has tried to have the best of both worlds in playing at once the game of states-in-exile and *de facto* states, and in building its constitutive and declaratory credentials for statehood. Something similar applies to the logical tension between the non-self-governing status of Western Sahara's territory and the SADR's statehood claim, which in turn relates to the symbiosis between the two components of the 'state-movement' (Wilson 2016) and their respective roles, benefits, and forms of recognition in the international sphere. Wearing the two hats has substantially enhanced the international agency of Saharawi national actors as a whole.

On the other hand, there are other legal and political ambiguities that the Polisario Front/SADR have always seen as detrimental to their interests and have consistently sought to dispel. Firstly, these include controversies on the international legal regime(s) applicable to Western Sahara, in which they have maintained a clear stance and strategic emphasis on the compatibility and complementarity between decolonization/self-determination and international humanitarian law including the law of occupation, as well as on Spain's continuing responsibility as the *de jure* administering power. Secondly, an increasingly glaring source of vulnerability for Sahrawis lies in the EU's ambiguity on the non-self-governing status of Western Sahara's territory and the conditions for the latter's legal inclusion in economic cooperation agreements with Morocco, including questions such as where lies the distinction between Western Sahara's people and local population, who are the actors entitled to represent this (these) collective(s), and how their consent is meant to be exercised. The EU's longstanding territorial undifferentiation practices – originally by default, increasingly by design – have been successfully challenged by the Polisario Front's lawfare at the CJEU, producing accumulating, compelling case-law.

Finally, another perceived disadvantage for the Polisario Front/SADR concerns broader international community and UN ambiguities about the nature and status of the Western Sahara conflict as such. Here, the liminality inherent to its three-decade status as a frozen conflict (no war, no peace) has been coupled with the UN Security Council's increasingly unclear language regarding self-determination as its defining feature, the referendum as the specific method for the Sahrawi people to exercise such right and even the

recognized parties to the conflict – as opposed to ‘neighbouring states’. These are the insidious ambiguities that, to a great extent, motivated the Sahrawi return to warfare in late 2020. Paradoxically, though, the ongoing low-intensity hostilities still remain in between the ‘state of war’ declared by the Polisario Front/SADR and ‘total absence of any armed conflict’ stated by Morocco.

References

- African Court on Human and Peoples’ Rights (2022). Judgement on Application No. 028/2018, 22 September, www.african-court.org/cpmt/storage/app/uploads/public/632/e0f/3ad/632e0f3ad580e748464681.pdf.
- APS (2021). Déclaration de Lamamra sur la rupture des relations diplomatiques avec le Maroc, 24 August, www.aps.dz/algerie/126530-declaration-de-lamamra-sur-la-rupture-des-relations-diplomatiques-avec-le-maroc.
- Besenyő, J., Huddleston, R.J. and Zoubir, Y.H. (eds) (2023). *Conflict and Peace in Western Sahara: The Role of the UN’s Peacekeeping Mission (MINURSO)*. Abingdon and New York: Routledge.
- Bouris, D. and Fernández-Molina, I. (2018). Contested States, Hybrid Diplomatic Practices, and the Everyday Quest for Recognition. *International Political Sociology*, 12 (3), 306–324.
- Bouris, D. and Fernández-Molina, I. (2024). The International Norm-Practice Relationship, Contested States and the EU’s Territorial (Un) Differentiation towards Palestine and Western Sahara. *Global Studies Quarterly*, 4 (2), 1–12.
- Caspersen, N. (2012). *Unrecognized States: The Struggle for Sovereignty in the Modern International System*. Cambridge: Cambridge University Press.
- Caspersen, N. and Stansfield, G. (eds) (2011). *Unrecognized States in the International System*. Abingdon and New York: Routledge.
- Castan Pinos, J. and Friis Hau, M. (2023). *Lawfare: New Trajectories in Law*. Abingdon and New York: Routledge.
- Council of the EU (2012b). Council Decision of 2 December 2010 on the Signature of the Agreement in the Form of an Exchange of Letters between the European Union and the Kingdom of Morocco Concerning Reciprocal Liberalisation Measures on Agricultural Products, Processed Agricultural Products, Fish and Fishery Products. *Official Journal of the European Union*, 7 September, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012D0496>.
- CJEU (2015). Judgement of the General Court (Eighth Chamber), Case T-512/12, 10 December, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62012TJ0512&qid=1678043196481>.
- CJEU (2016). Judgement of the Court (Grand Chamber), Case C-104/16 P, 21 December, <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:62016CJ0104>.

- CJEU (2018a). Judgment of the Court (Grand Chamber), Case C-266/16, 27 February, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62016CJ0266>.
- CJEU (2018b). Order of the General Court (Fifth Chamber, Extended Composition), Case T-180/14, 19 July, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62014TO0180%2802%29>.
- CJEU (2018c). Order of the General Court (Fifth Chamber), Case T-275/18, 30 November, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62018TO0275>.
- CJEU (2021). Judgement of the General Court (Ninth Chamber), 29 September, <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62019TJ0344>.
- Crawford, J.R. (2006). *The Creation of States in International Law*. 2nd edn. Oxford: Oxford University Press.
- Dunlap, C.J. (2008). Lawfare Today: A Perspective. *Yale Journal of International Affairs*, 3 (1), 146–154.
- Economist (2021). King Muhammad of Morocco Weaponises Migration. *Economist*, 22 May, www.economist.com/middle-east-and-africa/2021/05/22/king-muhammad-of-morocco-weaponises-migration.
- EU–Morocco (2013). Protocol between the European Union and the Kingdom of Morocco Setting Out the Fishing Opportunities and Financial Contribution Provided for in the Fisheries Partnership Agreement. *Official Journal of the European Union*, 7 December, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22013A1207%2801%29>.
- EU–Morocco (2019a). Agreement in the Form of an Exchange of Letters between the European Union and the Kingdom of Morocco on the Amendment of Protocols 1 and 4 to the Euro-Mediterranean Agreement Establishing an Association between the European Communities and their Member States, of the One Part, and the Kingdom of Morocco, of the Other Part. *Official Journal of the European Union*, 6 February, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2019.034.01.0004.01.ENG.
- EU–Morocco (2019b). Sustainable Fisheries Partnership Agreement between the European Union and the Kingdom of Morocco. *Official Journal of the European Union*, 20 March, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2019.077.01.0008.01.ENG.
- Fazal, T.M. (2018). *Wars of Law: The Unintended Consequences in the Regulation of Armed Conflict*. Ithaca: Cornell University Press.
- Fernández-Molina, I. (2017). The EU, the ENP and the Western Sahara Conflict: Executive Continuity and Parliamentary Detours. In D. Bouris and T. Schumacher (eds), *The Revised European Neighbourhood Policy: Continuity and Change in EU Foreign Policy*. New York: Palgrave Macmillan, 219–238.

- Fernández-Molina, I. (2019a). Bottom-up Change in Frozen Conflicts: Transnational Struggles and Mechanisms of Recognition in Western Sahara. *Review of International Studies*, 45 (3), 407–430.
- Fernández-Molina, I. (2019b). Momentum for Negotiations on Western Sahara Will Fade. *Oxford Analytica*, 8 November, <https://dailybrief.oxan.com/Analysis/DB247626/Momentum-for-negotiations-on-Western-Sahara-will-fade>.
- Fernández-Molina, I. and Porges, M. (2019). Western Sahara. In G. Visoka, J. Doyle and E. Newman (eds), *Routledge Handbook of State Recognition*. Abingdon and New York: Routledge, 376–390.
- Fernández-Molina, I. and Ojeda-García, R. (2020). Western Sahara as a Hybrid of a Parastate and a State-in-exile: (Extra)territoriality and the Small Print of Sovereignty in a Context of Frozen Conflict. *Nationalities Papers*, 48 (1), 83–99.
- Ferrer Lloret, J. (2017). El conflicto del Sahara Occidental ante los tribunales de la Unión Europea. *Revista General de Derecho Europeo*, 42, 15–64.
- Flavier, H. (2017). La Cour de justice, juge du droit international? Réflexions sur l’affaire Front Polisario. *Journal d’Actualité des Droits Européens*, 4, 1–15.
- Geldenhuis, D. (2009). *Contested States in World Politics*. New York: Palgrave Macmillan.
- Greenhill, K.M. (2010). *Weapons of Mass Migration: Forced Displacement, Coercion, and Foreign Policy*. Ithaca: Cornell University Press.
- Hagen, E. (2015). Saharawi Conflict Phosphates and the Australian Dinner Table. *Global Change, Peace & Security*, 27 (3), 377–393.
- International Crisis Group (2021). *Time for International Re-engagement in Western Sahara*. Brussels: International Crisis Group.
- Kalimo, H. and Nikoleishvili, S. (2022). Sovereignty in the Era of Fragmentation: EU Trade Agreements and the Notion of Statehood in International Law. *Duke Journal of Comparative & International Law*, 32 (2), 353–407.
- Kassoti, E. (2017a). The Front Polisario v. Council Case: The General Court, Völkerrechtsfreundlichkeit and the External Aspect of European Integration (First Part). *European Papers*, 2 (1), 339–356.
- Kassoti, E. (2017b). The Council v. Front Polisario Case: The Court of Justice’s Selective Reliance on International Rules on Treaty Interpretation (Second Part). *European Papers*, 2 (1), 23–42.
- Kittrie, O.F. (2016). *Lawfare: Law as a Weapon of War*. Oxford: Oxford University Press.
- Kolstø, P. (2006). The Sustainability and Future of Unrecognized and Quasi-States. *Journal of Peace Research*, 43 (6), 723–740.
- Krasner, St.D. (1999). *Sovereignty: Organized Hypocrisy*. Princeton: Princeton University Press.

- MAP (2016). Le Gouvernement du Royaume du Maroc exprime les plus vives protestations contre les propos du SG de l'ONU sur la question du Sahara Marocain (communiqué), 8 March, www.mapexpress.ma/actualite/activite-gouvernementale/gouvernement-du-royaume-du-maroc-exprime-les-vives-protestations-contre-les-propos-du-sg-lonu-question-du-sahara-marocain-communique/.
- MAP (2021a). Morocco Recalls HM the King's Ambassador in Berlin for Consultation. *MAP*, 6 May, www.mapnews.ma/en/actualites/politics/morocco-recalls-hm-kings-ambassador-berlin-consultation.
- MAP (2021b). Moroccan Ambassador to Spain has been Recalled for Consultations in Connection with Crisis that Goes Back to mid-April: FM. *MAP*, 20 May, www.mapnews.ma/en/actualites/politics/moroccan-ambassador-spain-has-been-recalled-consultations-connection-crisis-goes.
- Matthews, T. (2023). Interrogating the Debates Around Lawfare and Legal Mobilization: A Literature Review. *Journal of Human Rights Practice*, 15 (1), 24–45.
- McConnell, F. (2016). *Rehearsing the State: The Political Practices of the Tibetan Government-in-Exile*. Chichester: Wiley-Blackwell.
- Oeter, Stefan (2015). (Non-)Recognition Policies in Secession Conflicts and the Shadow of the Right of Self-Determination. In C. Daase, C. Fehl, A. Geis, and G. Kolliarakis (eds), *Recognition in International Relations: Rethinking a Political Concept in a Global Context*. Basingstoke: Palgrave Macmillan, 125–140.
- Pegg, S. (1998). *International Society and the de Facto State*. Farnham: Ashgate.
- Polisario Front (1976). Carta de Proclamación de la Independencia de la República Árabe Saharaui Democrática, 27 February, <https://frentepolisario.es/carta-proclamacion-independencia-rasd/>.
- Royaume du Maroc (2016). Déclaration de M. le ministre de la Communication Porte-parole du Gouvernement au sujet de l'évolution des relations entre le Royaume du Maroc et l'Union européenne, 25 February, www.maroc.ma/fr/actualites/declaration-de-m-le-ministre-de-la-communication-au-sujet-de-levolution-des-relations.
- Saul, B. (2015). The Status of Western Sahara as Occupied Territory under International Humanitarian Law and the Exploitation of Natural Resources. *Global Change, Peace & Security*, 27 (3), 301–322.
- Smith, J.J. (2020). A Four-Fold Evil? The Crime of Aggression and the Case of Western Sahara. *International Criminal Law Review*, 20 (3), 492–550.
- Soroeta Licerias, J. (2014). *International Law and the Western Sahara Conflict*. Oisterwijk: Wolf Legal Publishers.
- Suárez-Collado, Á. and Contini, D. (2022). The European Court of Justice on the EU-Morocco Agricultural and Fisheries Agreements: An Analysis of the Legal Proceedings and Consequences for the Actors Involved. *The Journal of North African Studies*, 27 (6), 1160–1179.

- Swiss Federal Department of Foreign Affairs (2015). Notification to the Governments of the States parties to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, 26 June, www.eda.admin.ch/content/dam/eda/fr/documents/aussenpolitik/voelkerrecht/geneve/150626-GENEVE_en.pdf.
- Torres-Spelliscy, G. (2014). The Use and Development of Natural Resources in Non-self-governing Territories. In A. Boukhars and J. Roussellier (eds), *Perspectives on Western Sahara: Myths, Nationalisms, and Geopolitics*. Lanham: Rowman and Littlefield, 235–260.
- UNGA (1988). Letter dated 17 May 1988 from the Permanent Representatives of Algeria and Morocco to the United Nations addressed to the Secretary-General, 17 May, <https://digitallibrary.un.org/record/38851>.
- UN Secretary-General (2016a). Secretary-General's Remarks to Press with Foreign Minister of Algeria, 6 March, www.un.org/sg/en/content/sg/press-encounter/2016-03-06/secretary-generals-remarks-press-foreign-minister-of-algeria-scroll-down-for-qa-english.
- UN Secretary-General (2016b). Note to Correspondents in Response to Questions on Western Sahara, 9 March, www.un.org/sg/en/content/sg/note-correspondents/2016-03-09/note-correspondents-response-questions-western-sahara.
- UN Security Council (2002). Letter Dated 29 January 2002 from the Under-Secretary-General for Legal Affairs, the Legal Counsel, addressed to the President of the Security Council, S/2002/161, 12 February, <https://digitallibrary.un.org/record/458183?ln=en>.
- Werner, W.G. (2010). The Curious Career of Lawfare. *Case Western Reserve Journal of International Law*, 43 (1), 61–72.
- White House (2020). Proclamation on Recognising the Sovereignty of the Kingdom of Morocco over the Western Sahara, 10 December, <https://trumpwhitehouse.archives.gov/presidential-actions/proclamation-recognizing-sovereignty-kingdom-morocco-western-sahara/>.
- Wilson, A. (2016). *Sovereignty in Exile: A Saharan Liberation Movement Governs*. Philadelphia: University of Pennsylvania Press.
- Wrange, P. and Helaoui, S. (2015). *Occupation/Annexation of a Territory: Respect for International Humanitarian Law and Human Rights and Consistent EU Policy*. Brussels: European Parliament.
- Zunes, S. and Mundy, J. (2022). *Western Sahara: War, Nationalism and Conflict Irresolution*. 2nd edn. New York: Syracuse University Press.