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## **Identity, Resilience and Power in Self-Determination Conflicts**

### **The Case of the Western Sahara**

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# Identity, Resilience and Power in Self-Determination Conflicts

## The Case of the Western Sahara

Maria João Barata

I am going to talk about self-determination (SD) and how the idea and norm of SD can impact on the construction of the identity of a people, making it resilient in pursuing some sort of liberation. This argument is based on a constructivist perspective that places norms at the core of the constitutive interplay between actors and international system. I will illustrate the argument considering the construction of a Sahrawi identity that claims for SD, considering its resilience in pursuing a project of political independence.

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In international politics, self-determination is both an idea and a norm. As an *idea*, self-determination refers to an inalienable right to freedom, which by its side implies a right to fight against oppression imposed by others. At the same time, SD designates specific and explicit *norms* of international law that mainly concern ways of bounding, bordering and governing political communities.

The norm of self-determination has effects at the same time regulative and constitutive. I am particularly interested in its constitutive effects, because of the productive kind of power they can produce, which I connect with concepts of identity and resilience.

Legitimacy is crucial in these effects. But legitimacy here is a tricky matter.

By one hand, many identity groups that do not consider themselves to be adequately represented by any existing State strive to form their own State or to substantially transform the nature of some already existing State. These struggles are tightly connected with perceptions of justice which anchor in this modern idea of self-determination as a right to liberate from oppression.

But, on the other hand, the international system functions in ways that favour the reproduction of existing entities – this meaning the existing states as well as the State has the supreme form of political community. The very norm of self-determination is in practice strongly limited by the principle of territorial integrity, not least because of the countless and really complex cases of overlapping and conflicting claims to self-determination. Besides, SD is being increasingly discredited in international top down politics.

So this is not a purely ideological and normative discussion, nor is it always resolved with referendums. On the contrary, self-determination is related with much of today's violent political conflict, and especially in territorial conflicts and conflicts that concern political representation of national or ethnic identities. These kind of conflicts tend to be particularly protracted and deadlier (Jenne, 2006: 7).

People and groups draw on international norms (both in the sense of norms of international law as in the sense of generally accepted ideas and practices) to confront oppression and domination. This is instrumental, concerning the regulative effects of norms, but has also more deep constitutive effects. International norms can reflect in cultural, institutional and material constitution of the groups who claim them. This is particularly the case with self-determination, as it concerns the very possibility of being recognised and accepted as an international actor.

As constructivist authors have pointed, international law establishes the conditions under which recognition of some entity or identity can be claimed, thus establishing the conditions to exist and act institutionally (cf. Ringmar, 1995). But, as notes Kratochwil, the existence of a right must in fact be claimed by its holder; at the same time, such right safeguards him or her against other sort of moral or instrumental considerations (Kratochwil, 1989: 159 ss).

Thus law can sustain power of a productive kind (Werner, 2010). Law endows collective identities and agency not only with interests and rationale but also with the capacity to wage sacrifices in struggling for which they perceived as a right. This is only possible in face of intersubjective commitments which can generate exclusion, inclusion or both. In what concerns the norm of SD, it either can feed a logic of us *versus* them, as it can instead, by way of a reflexive process, build bridges intergenerational, inter social class and supra tribal. In this second case it can produce solidarity in the descriptive Durkheimian sense, besides the normative or ethical one, referring to the social production of cohesion – what is it that holds society, with its multiple components, together.

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I will now make a brief outline of the conflict over the territory of the Western Sahara.

The Western Sahara (WS) conflict – in northern Africa – is basically a conflict between the claim of a right to self-determination by the Sahrawi people, which is internationally voiced by its liberation movement, the Polisario, and, on the other hand, the attempt by Morocco to incorporate it in its kingdom.

The right to self-determination was first recognised to the population of the territory by the UN in 1964, referring to the GA Resolution 1514 – the Declaration on the Granting of Independence to Colonial Countries and Peoples – meaning that the population of the territory could choose between independence, free association or integration with an independent State. To this purpose, Spain, the colonial power, should organise a referendum, which she started planning in the beginning of the 1970s. Morocco and Mauritania had started to claim the self-determination of the territory in the previous decade, but with the perspective that populations in the north and in the south would choose to integrate in its States, respectively. Meanwhile, a nationalist movement held by young and educated Sahrawis developed in the territory. In 1974 Morocco pressed the GA to request the International Court of Justice an Advisory Opinion on the status of the territory before colonisation. The court's ultimate conclusion was again that the population should exercise its right to self-determination in accordance with the GA Resolution 1514.

When Spain hastily withdraw from the territory in 1975, Morocco and Mauritania invaded it from the north and the south, respectively. Then a war was waged against them by Polisario. At the same time, thousands of Sahrawis flew to the Algerian region of Tindouf. Peace with Mauritania was held in 1979. With Morocco, the war halted in 1988 and in 1991 it was implemented on the ground a peacekeeping mission: the UN Mission for the Referendum in Western Sahara (MINURSO – from its designation in Spanish). The identification of the voters for the referendum was a very complicated process during the 1990s – while Polisario tried to stick to the census that Spain had already made, Morocco tried to include thousands of other names, based on tribal or residential criteria, since it had been dislocating Moroccan citizens to the WS. The UN did not thwart effectively these Moroccan tactics. Since 2001 the resolution of the conflict is being

approached by the UN in terms of the negotiation of a political solution that can be accepted by both parts. Meanwhile, most of the territory is *de facto* occupied by Morocco – with military forces, thousands of settlers and companies exploring the natural resources of the territory – and about 200 000 people rest in refugee camps run by Polisario in Algeria.

Though the parts still comply with the cease-fire, conflict persists:

- In Tindouf, some groups of former fighters and young men try to push Polisario to resume armed conflict.
- A high level of militarization, intimidation, social control, coercion and propaganda still persist, with some variations in both sides.
- In the occupied territories there has been growing activities of resistance, contestation and claim; these activities are being held in nonviolent ways – with demonstrations, encampments, sit-ins and hunger strikes – yet being violently repressed.
- Violations of Sahrawis' human rights have been decreasing, but still happen, mainly in the occupied territories, where there is already a huge record of disappeared people, illegal detentions, imprisonment for political reasons (though justified as common crime), torture, beatings and sexual violence.
- In the negotiations being held since 2007 some progresses have been made in what concerns things such as demining or meetings among separated families. But the parts remain irreducible in what concerns the ultimate scenarios to the resolution of the conflict.

Morocco proposes an autonomy plan for the territory to be approved by the population through a referendum, and does not accept that political independence of the territory

would be an option in such, or any other, referendum. By its side, it is precisely this option for political independence that Polisario takes as nonnegotiable and persists claiming the organization of a referendum for the Sahrawis to decide on that.

Polisario sustains its claims in the fact that the international community recognizes a right to self-determination to the Sahrawi people, particularly de UN and the African Union. By its side, Morocco argues that before colonisation the territory was inhabited by populations that plied allegiance and were loyal to Moroccan sultan. Based on that, he tries to legitimate the effective occupation of most of the territory, invoking the principles of territorial integrity and non-interference.

The question of whether a Sahrawi people exists, as well as the related question of who precisely belongs to this people, have been questions crucial in debating the origins of the conflict and the scenarios to resolve it. Morocco argues that that there is a huge ambivalence in defining and bordering a Sahrawi people, and, because of that, it is not possible to hold a credible self-determination vote. Besides, it insists on conveying the idea that the Sahrawi people is, literally, the whole population that inhabits the whole vast Sahara desert, a bunch of anarchic and quarrelsome tribes that would not be able to build a viable independent State. Polisario assumes such a people exists and one should depart from the colonial experience in order to identify its boundaries.

The Declaration on the Granting of Independence to Colonial Countries and Peoples (Resolução da AG 1514 [XV] de 1960) had recognised, in 1960, the right to self-determination to peoples under colonial dominion. But the Declaration had also subordinated such right to the principle of the territorial integrity, stating that – quoting – “Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of

the United Nations” (paragraph 6). However, this paragraph could have had two different interpretations. It could refer to a pre-colonial era, in which case it would mean the territorial area of an ethnic group or previous political community; or otherwise it could refer to the colonial borders. It was this last one interpretation that was adopted. This was then further reinforced by the – at the time – Organisation of the African Unity, who declared that borders inherited from colonialism were tangible and outlawed its violation (AHG/Resolução 16[I] de 1964). This resolution was only opposed by Somalia and Morocco, two countries that precisely had the intention to restore an alleged pre-colonial unity, upon ethnic and historical arguments.

The boundaries, the collective consciousness and the institutional lines of the Sahrawi – let’s say – self that conveys a project of political independence (this qualification is important because not all Sahrawis are for independence) are that much an effect of a secular experience of living in the harsh west part of the Sahara desert as they are an effect of the international norms and practices that shape modern political communities, among them the right to self-determination and its international recognition to the populations of the WS.

I have developed this analysis elsewhere, and have not the time to present it here. Suffice to point here that much suffering and sacrifice could be avoided if most of the Sahrawi population accepted Moroccan presence, which they do not.

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The deadlock in what concerns the resolution of this conflict has been addressed mainly on the basis of the tension between two contrasting logics: power politics in the international system, favoring Morocco pretention to integrate the territory in its

kingdom, and international law, recognizing the right to self-determination to the people of the territory.

Some analysts argue that it is only the international recognition of the right to self-determination to the population of the territory and the support they get from Algeria that prevents the recognition and formalization of an annexation they understand as irreversible. For others, the Sahrawis' right to SD is an inalienable right and the so called "international community" cannot give up trying to wage a SD referendum in the territory.

Both perspectives rest on a mainly regulative conception of law and norms. The first one tends to see Sahrawi claim for SD as a result of its nationalism, and to see this nationalism as an artificial product of the ideology of the decolonisation era. On the contrary, to consider a constitutive perspective drives us to look into the institutional conditions that make possible and internationally recognisable a political community, comprising a population and a territory. It is these conditions that make nationalism to be, in this case, a mechanism of liberation, this requiring the reconstruction of a people according to such conditions.

This perspective should not lead to a downgrading of these kind of relatively recent nationalists identities, such as the Sahrawi. Instead, the idea is to better understand its resilience within a widely international political context that downgrades the circumstances, political and normative, that gave rise to this conflict 4 decades ago. Giving the way the norm of SD is being devaluated in international politics (I had not the time to demonstrate here this point), as well as the somehow late appearance of the Sahrawi nationalism, comparing with similar anti-colonial movements, the resilience of this SD claim and political independence project would be highly improbable.

Notwithstanding, it is the main power impeding any attempt of legitimisation of the Moroccan occupation of the territory, though not enough to get effective SD.

Besides, to claim SD is what allows Sahrawis to present an identity that is coherent with the norms of the international society of States, and so to keep its struggle in ways internationally recognisable and legitimate.

To conclude with reference to the topic of the workshop, my analysis points to think that, at the collective level, resilience in political processes is possible when there are intersubjective commitments strong enough to sustain perseverance in face of domination, oppression or other sort of antagonism. These commitments can be particularly effective when justice in the light of common norms is at stake.

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