

CANMUN 2025

BACKGROUND GUIDE



UNSC UNITED NATIONS
SECURITY COUNCIL

Letter from the Executive Board

Dear delegates,

It is with profound honor and immense pleasure that we welcome you to the most powerful committee of the United Nations, the Security Council at CANMUN 2025. As the Executive Board, we are dedicated to ensuring a seamless and enriching committee experience over the next two days. Your roles as representatives of member nations are critical as you engage in meaningful debates, deliberations, and consensus-building on our agenda.. The EB will do everything in our power to ensure that the committee progresses smoothly over the three days and we hope that every delegate emerges from this committee as a more experienced diplomat. The agenda for this committee is one of prime importance - The Western Sahara Dispute. As you go through your background guide, we have highlighted key topics which are sensitive areas in this conflict.

It is of utmost importance to note that this background guide only serves as a headstart to your research and every delegate is expected to do his/her own research and bring strong and valid arguments to the table. We also hope to emphasise that this experience is more than the awards/certificates you get, it is about building awareness regarding current affairs and building transferable skills such as diplomacy and negotiation.

Last but not least, a committee is only as good as its delegates and we believe that each and every one of you has the potential to excel and lead, first-timer or not. We encourage each and every one of you to speak and participate as it would give us great joy to know that each delegate walked away from our committee with more knowledge than he or she walked in with.

A word of advice - do look into the technicalities of the agenda and be well-versed with your facts. Being prepared is the key to being confident. We look forward to three days of extensive and productive debate. Good Luck!

Regards,

Chairperson: Adithya Krishna

Vice Chairperson: Daniel Zachariah

Moderator: Shreyansh Jain

Origin and the Overview of the UNSC

The UNSC is often referred to as the pillar of the United Nations and the global forum. The fifteen members of the UN Security Council seek to address threats to international security. The UN Charter established the Security Council, which gives primary responsibility for maintaining international peace and security to the Council, which may meet whenever peace is threatened. The Security Council consists of ten elected members, and five permanent members (China, the United States, France, the United Kingdom, and the Russian Federation). Under the Charter of the United Nations, all Member States are obligated to comply with Council decisions. It calls upon the parties to settle any dispute by peaceful means and recommends methods of adjustment or terms of settlement. In some cases, the Security Council can resort to imposing sanctions or even authorising the use of force to maintain or restore international peace and security. The Security Council has five permanent members—the United States, China, France, Russia, and the United Kingdom—collectively known as the P5. These nations possess the ‘veto power’

The member states include:

1. Algeria
2. Guyana
3. Republic of Korea
4. Sierra Leone
5. Slovenia
6. Denmark
7. Greece
8. Pakistan
9. Panama
10. Somalia
11. *United States of America*
12. *Russian Federation*
13. *People's Republic of China*
14. *French Republic*
15. *United Kingdom*

The last 5 countries are referred to as the P5 Nations, which have the power to veto any resolution.

According to the Charter, the United Nations has four purposes:

- to maintain international peace and security;
- to develop friendly relations among nations;
- to cooperate in solving international problems and in promoting respect for human rights;
- to be a centre for harmonising the actions of nations. All members of the United Nations agree to accept and carry out the decisions of the Security Council. While other organs of the United Nations make recommendations to member states, only the Security Council has the power to make decisions that member states are then obligated to implement under the Charter.

Overall, being the root of the United Nations, the UNSC represents peace, prosperity and development of the global nation. It calls upon all the member states to settle disparities peacefully and promptly to enhance global peace of the world.

UNSC has one goal: to maintain international peace and security; to develop friendly relations among nations; to cooperate in solving international problems and in promoting respect for human rights; and to be a centre for harmonising the actions of nations.

Nature of evidence

Documents from the following reports and documents will be accepted by the committee in cases of any controversial statements made in the session. Below, some reports will not serve as proper evidence in the committee.

1. **Reuters, Al Jazeera** - Documents and quotations from the Reuters and Al Jazeera news agencies will be widely accepted. In cases of executive board approval of the accuracy check on statements that surround controversy, which are made in committee.
2. **Official Government documents** - Government official documents, reports and quotations will also be considered as evidence or proof of any such statement made during the committee.
3. **UN official reports** - All United Nations agency reports will be accepted as adequate evidence and proof. Quotations and Verbatim from UN charters will suffice as solid proof and will be valid.
4. **Invalid sources** - Evidence and quotations from sources like Wikipedia will not serve as authentic proof in committee. Although it is barred from serving as proof, it can be used to understand the agenda better.

Rules of Procedure

A Model UN is built upon its rules of procedure. With no proper conduct, we fail the entire point of a mock UN. This section of the Background guide will cover all the ROPs required to know the basic happenings of a conference.

1. **Research** - Each delegate must research the nation's profile, agenda background, previous international action, and the country's foreign policy, along with possible solutions that relate to the agenda. These five aspects serve as the cornerstones of the research conducted by the delegate.
2. **Roll call** - A delegate can vote either 'present' or 'present and voting'. 'Present' grants the delegate to abstain from voting upon the draft resolution, whereas 'Present and voting' does not grant the delegate the same power of abstaining.
3. **The General Speakers List** - The GSL refers to a speech of merely 90 seconds that talks about the agenda or summarises one's position paper. It is to be of relevance to one's nation and the agenda.
4. **Time Yields** - If a delegate has an amount of time remaining in their speech, they may yield their time in the following ways.
 - Yield to the EB
 - Yield to the floor for questions
 - Yield to comments
 - Yield to another delegate
5. **Moderated Caucus** - A moderated caucus refers to a speech made to cover a sub-topic of the agenda. It requires a majority of committee votes to pass. It requires specific verbatim to make it valid. For example:- "The delegate of XYZ would like to motion for a moderated caucus on the topic XYZ for a total period of X, providing X to each speaker."
6. **Unmoderated Caucus** - During this caucus, delegates are free to lobby, discuss future moderated caucuses, make allies, work on papers, etc. It is often referred to as informal debate.
7. **Points** - Four points are used in a conference. They are as follows:
 - *Point of information* - POIs are questions directed to a delegate's speech under the agenda and are strictly required to be relevant.
 - *Point of order* - Under a point of order, a delegate may raise either a 'logical fallacy' or 'factual inaccuracy'
 - ❖ *Logical fallacy* - When a delegate mentions something in their speech that is logically fallacious, we refer to it as a logical fallacy.
 - ❖ *Factual inaccuracy* - When a delegate has mentioned a fact that is wrong or inaccurate in any way, we refer to it as a factual inaccuracy.
 - *Point of parliamentary inquiry* - A POE may be raised to clarify any doubts and misunderstandings concerning the proceedings of the committee.
 - *Point of personal privilege* - A Point of Personal Privilege must refer to a matter of personal comfort, safety, and/or well-being of the members of the committee.

8. Documentation

- *Position paper* - Refers to a paper that is to be submitted before the dates of the conference. It contains the stance of your nation and must answer the following: Current position of the nation, Past actions, Possible solutions
- *Draft resolution* - Resolutions are a commuted compilation of the solution discussed in committee that are presented to the world community as an actionable suggestion to curb a certain issue.
- *Working Paper* - Working papers are an outline of the solutions proposed. They are usually to be submitted before the tabling of the DR.

9. Voting

There are 5 types of voting methods. All being -

- Yes
- No
- Yes, with rights
- No with rights
- Abstain

The Legal Architecture of a Decolonisation Deferred

The legal framework governing the Western Sahara conflict is rooted in the mid-20th-century process of decolonisation. The territory's trajectory was set on a clear path toward self-determination, only to be violently interrupted and diverted. This initial part of the analysis establishes the foundational legal architecture of the dispute, arguing that a specific set of rights and obligations is vested in the territory and its people under international law. These legal facts persist, creating a normative reality that stands in stark contrast to the political and military situation on the ground.

The Spanish Mandate and the Inception of a Right

The modern legal history of Western Sahara begins with its colonisation by Spain, which claimed a protectorate over the coastal zone in 1884 following the Berlin Conference.¹ For decades, Spanish control was tenuous, marked by resistance from the indigenous Sahrawi tribes.² In 1958, Spain consolidated its administrative authority by formally uniting the districts of Saguia el-Hamra and Río de Oro into the overseas Province of Spanish Sahara.¹

The decisive legal turning point, however, occurred not in Africa but in New York. In 1963, Spain transmitted information on Spanish Sahara under Article 73(e) of the Charter of the United Nations, leading to its inclusion on the UN list of Non-Self-Governing Territories (NSGTs).⁴ This administrative act was of profound legal significance. It formally placed the territory within the decolonisation framework of Chapter XI of the UN Charter, legally binding Spain, as the designated Administering Power, to the "sacred trust" of promoting the well-being of the inhabitants and developing self-government.⁸ The legal status of Western Sahara as an NSGT is, therefore, the original legal fact from which all subsequent rights and obligations flow. It is not merely a historical descriptor but an active legal classification that triggers a specific, and mandatory, set of international legal rules.

This legal status gave rise to a series of UN General Assembly (UNGA) resolutions that built a normative consensus around the territory's future. Beginning with Resolution 2072 in 1965, the UNGA explicitly called on Spain to decolonise the territory 7. The following year, it went further, requesting Spain to organise a referendum under UN supervision to enable the indigenous population to exercise its right to self-determination 10. This right of the Sahrawi people was thus not a mere political aspiration but a legal entitlement that vested in 1963 and has been continuously reaffirmed by the international community's principal deliberative body ever since. Spain's failure to implement these resolutions, coupled with decades of social and economic change, led to a surge in Sahrawi nationalism 1. This culminated in the formation of the Popular Front for the Liberation of Saguia el-Hamra and Río de Oro (Polisario Front) on May 10, 1973, an indigenous liberation movement created with the express purpose of achieving independence, first from Spain and later from its neighbours 11.

The 1975 Advisory Opinion of the International Court of Justice

As pressure mounted on Spain to decolonise, competing claims to the territory emerged from newly independent Morocco and Mauritania.¹ To clarify the legal situation before the planned referendum, the UNGA, via Resolution 3292, requested an advisory opinion from the International Court of Justice (ICJ) on two key questions 11. The Court's opinion, delivered on October 16, 1975, is a seminal document in the conflict's legal history 15.

The first question was whether Western Sahara was a terra nullius (a territory belonging to no one) at the time of Spanish colonisation in 1884. The Court unanimously answered in the negative. Applying the intertemporal law principle—evaluating the facts in light of the law in force at the time—the Court found that 19th-century state practice did not consider territories inhabited by peoples with a social and political organisation to be terra nullius 15. Since Western Sahara was inhabited by nomadic but socially and politically organised tribes under chiefs competent to represent them, it could not have been legally acquired through "occupation" of an empty land 15.

The second, more complex question concerned the "legal ties" between the territory and the Kingdom of Morocco and the "Mauritanian entity" prior to Spanish colonisation. Morocco presented evidence of historical allegiance from some Saharan tribal leaders (caids) to the Moroccan Sultan, including appointments and the levying of taxes, as well as treaties, it argued, demonstrated international recognition of its sovereignty 20. The Court engaged in a meticulous analysis of this evidence and drew a critical distinction between ties of personal allegiance and ties of territorial sovereignty. It found that while there were indeed "legal ties of allegiance between the Sultan of Morocco and some of the tribes living in the territory," these ties were not universal and did not equate to sovereignty over the land itself 17. The Court stated unequivocally that the materials presented "do not establish any tie of territorial sovereignty between the territory of Western Sahara and the Kingdom of Morocco or the Mauritanian entity" 5.

The Court's dispositive finding was that these historical links were not of such a nature as to override the application of UNGA Resolution 1514 (XV) on the Granting of Independence to Colonial Countries and Peoples. It affirmed the primacy of the principle of self-determination, which it stated must be resolved through the "free and genuine expression of the will of the peoples of the Territory" 18.

This nuanced legal opinion was immediately and deliberately subverted. Morocco's King Hassan II seized upon the Court's acknowledgement of "legal ties," while completely ignoring the dispositive finding that these ties did not constitute sovereignty 10. In a national address the same evening, he portrayed the ruling as a vindication of Morocco's claim and announced a "Green March" of 350,000 Moroccan civilians to "reclaim" the territory 12. This act of political theatre, backed by the Moroccan military, created a fait accompli on the ground that directly contradicted the ICJ's legal conclusion. The event serves as a stark case study in the limits of international law's normative power when confronted with determined state action and the acquiescence of other powers, effectively short-circuiting a legal process with a political-military one.

The Madrid Accords: An Illegitimate Transfer?

Under the immense pressure of the Green March and facing its own domestic political crisis with the impending death of dictator Francisco Franco, Spain capitulated.¹ On November 14, 1975, Spain, Morocco, and Mauritania signed the tripartite Madrid Accords 28. Publicly, the agreement was a "Declaration of Principles" establishing a temporary tripartite administration and committing Spain to withdraw by February 28, 1976.²⁸ Secretly, it contained provisions for partitioning the territory, with the northern two-thirds (including the valuable Boucraa phosphate mines) going to Morocco and the southern third to Mauritania, while Spain retained a 35% stake in the mines and secured fishing rights 24.

From the perspective of international law, the Madrid Accords are fundamentally invalid as an instrument of decolonisation. The agreement was concluded in direct defiance of the ICJ's opinion, without consulting the Sahrawi people, and in violation of their right to self-determination, which is widely considered a *jus cogens* norm (a peremptory principle of international law from which no derogation is permitted). Under Article 53 of the Vienna Convention on the Law of Treaties, a treaty is void if it conflicts with a *jus cogens* norm.

The legal deficiencies of the Accords were later confirmed in a January 29, 2002, legal opinion by the UN Under-Secretary-General for Legal Affairs, Hans Corell. He concluded that the Accords "did not transfer sovereignty over the Territory, nor did it confer upon any of the signatories the status of an administering Power, a status which Spain alone could not have unilaterally transferred"²⁹. The UN General Assembly never endorsed the agreement, and the Security Council, in Resolution 380 (1975), had already "deplored" the Green March and called for Morocco's immediate withdrawal 27.

Therefore, the Madrid Accords represent a political arrangement for Spain's disengagement, not a valid legal transfer of sovereignty or administrative authority. Spain's attempt to divest itself of its responsibilities as the Administering Power was legally ineffective. The failure of the international community, particularly the Security Council, to declare the accords null and void at the time created a foundational legal ambiguity that Morocco has exploited for nearly five decades to legitimise its presence. Legally, Spain's obligations under Chapter XI of the UN Charter, though unfulfilled, technically remain 2.

The Contested Status of the Territory and its People

The violent interruption of the decolonisation process has resulted in a complex and paradoxical legal status for Western Sahara and its inhabitants. Morocco's de facto control clashes with the territory's enduring de jure status under international law. Dissecting these legal distinctions is essential for a coherent analysis of the conflict and the rights and obligations of all parties involved.

A Non-Self-Governing Territory under Occupation

The legal consequences flowing from the events of 1975 are twofold. First, Western Sahara remains on the UN list of Non-Self-Governing Territories 4. Its decolonisation process is incomplete, making it "Africa's last colony" 33. As the Madrid Accords were legally insufficient to transfer administrative authority, Spain remains the de jure Administering Power, a status affirmed by the UN and even by Spain's own National High Court in a 2014 ruling 2.

Second, Morocco's control over approximately 80% of the territory, established and maintained by military force without a valid sovereign title, constitutes a military occupation under international law 26. This dual status of an NSGT under occupation is not contradictory; it reflects the legal reality that an NSGT can be occupied by a third party, as has been affirmed in UN documents 29. This situation triggers the simultaneous application of two distinct bodies of international law:

1. ***The Law of Decolonisation (Chapter XI of the UN Charter):*** This governs the responsibilities of the Administering Power (Spain) and the rights of the people of the NSGT.
2. ***The Law of Belligerent Occupation:*** This body of law, primarily codified in the 1907 Hague Regulations and the 1949 Fourth Geneva Convention, governs the conduct of the Occupying Power (Morocco) and is designed to be temporary and to protect the rights of the occupied population.

Morocco's actions must be measured against the strictures of the law of occupation. These include the obligation to respect the laws in force in the country (Article 43, Hague Regulations), the prohibition on the forcible transfer or deportation of protected persons, and the prohibition on transferring parts of its own civilian population into the occupied territory (Article 49, Fourth Geneva Convention). Morocco's policy of encouraging and subsidising the settlement of hundreds of thousands of its citizens in Western Sahara represents a clear and ongoing breach of this latter provision 1. The construction of the 2,700 km-long sand wall, or "Berm," heavily fortified with landmines and military personnel, is the physical manifestation of this effective control and occupation 12.

The persistent failure in many diplomatic forums, particularly early UN Security Council resolutions, to consistently and explicitly label Morocco's presence as an "occupation" has had a corrosive effect on the legal discourse. It has allowed Morocco to frame its role as one of legitimate administration and development in its "Southern Provinces," thereby obscuring its specific and restrictive obligations as an Occupying Power and diluting a clear legal status into a vague political "dispute" 30.

The Sahrawi Arab Democratic Republic (SADR) and the Criteria for Statehood

In the political and legal vacuum left by Spain's precipitous withdrawal, the Polisario Front proclaimed the Sahrawi Arab Democratic Republic (SADR) on February 27, 1976.9 The SADR's claim to statehood can be assessed against the declarative theory of statehood, codified in Article 1 of the 1933 Montevideo Convention, which sets out four criteria for statehood under customary international law:

1. **A permanent population:** The Sahrawi people, estimated at around 500,000, constitute this population, including those living in the Moroccan-controlled territory, the SADR-controlled "Free Zone," and the refugee camps in Tindouf, Algeria 30.
2. **A defined territory:** The SADR claims the entire territory of Western Sahara. While it currently exercises effective control over only the easternmost 20-30% (the "Free Zone"), international law does not require a state to have fully settled boundaries or control over its entire claimed territory to exist 13.
3. **Government:** The SADR possesses a functioning government-in-exile, with a constitution, a prime minister, a legislature (the Sahrawi National Council), and administrative structures that govern the refugee camps and the Free Zone 36.
4. **Capacity to enter into relations with other states:** The SADR has demonstrated this capacity. It is a full, founding member of the African Union (AU), a status that led to Morocco's withdrawal from the AU's predecessor, the Organisation of African Unity, for 33 years 36. It maintains diplomatic relations with dozens of states, although the number has fluctuated significantly due to intense Moroccan diplomatic pressure 38.

The SADR's situation highlights the classic tension between the declarative theory (statehood as a matter of fact) and the constitutive theory (statehood as dependent on recognition by other states). While the SADR can make a plausible claim to meeting the objective Montevideo criteria, its full legal personality on the global stage is hampered by the lack of recognition from powerful states, most notably the permanent members of the UN Security Council 41. This political division over recognition is the primary obstacle to the SADR's effectiveness, despite its potential satisfaction of the declarative criteria for statehood.

The People vs. The Population

A crucial legal distinction, brought into sharp focus by the jurisprudence of the Court of Justice of the European Union (CJEU), exists between the "people" of Western Sahara and the current "population" of the territory 37. This distinction is not merely semantic; it is the legal lynchpin that invalidates Morocco's strategy for legitimising its control.

The "people" of Western Sahara, who hold the *erga omnes* (owed to all) right to self-determination, are the indigenous Sahrawis. This legal entity includes the significant refugee population that was displaced by the conflict in 1975 and now resides primarily in camps near Tindouf, Algeria 37. The "population" of the Moroccan-controlled territory is a different demographic. As a result of decades of state-sponsored settlement policies, this population now comprises a majority of Moroccan citizens 12.

In its 2024 judgment, the CJEU explicitly addressed this distinction. It noted that the majority of the current inhabitants of Western Sahara are not part of the "people" holding the right to self-determination. The Court affirmed that this right "belongs to that people, and not to the population of that territory in general" 37. This legal finding directly confronts and invalidates Morocco's demographic strategy. Morocco has long sought to create a new reality on the ground by altering the territory's demographic composition and then claiming to consult this new population or hold local elections in which they participate 1. The CJEU's reasoning demolishes this approach by clarifying that the relevant demos for any act of self-determination—whether it is a referendum on final status or giving consent to an international trade agreement—is the pre-occupation "people," not the post-occupation "population." This has profound implications for the stalled UN referendum, legally reaffirming that the voter rolls must be based on the 1974 Spanish census and their descendants, not the territory's current inhabitants 12.

The UN Mandate and the Elusive Referendum

The United Nations has been centrally involved in the Western Sahara conflict for decades, yet its efforts have resulted in a protracted stalemate. This section critically assesses the UN's role, arguing that an initially clear and legally grounded mandate for a referendum has been progressively eroded by political obstruction and a subtle but significant shift in diplomatic language, raising serious questions about the Security Council's commitment to upholding its own foundational resolutions.

The UN Settlement Plan and the Mandate of MINURSO

Following years of intense warfare, Morocco and the Polisario Front accepted a UN and Organisation of African Unity-brokered Settlement Plan in 1988, which led to a ceasefire in 1991¹. This plan was formally endorsed and given legal force by the UN Security Council in Resolutions 658 (1990) and 690 (1991)⁴⁴. The centrepiece of the Settlement Plan was the establishment of the United Nations Mission for the Referendum in Western Sahara (MINURSO).

The mission's name itself constitutes a legal commitment, codifying the sole agreed-upon path to a final status determination. The mandate was unambiguous and twofold: first, to monitor the ceasefire, and second, to organise and conduct a free and fair referendum in which the people of Western Sahara would choose between two options: independence or integration with Morocco⁴⁵. To ensure impartiality, the plan stipulated that the Special Representative of the Secretary-General would have "sole and exclusive responsibility" over all matters relating to the referendum⁴⁵. The referendum was not just one possible outcome; it was the legally mandated and contractually agreed-upon method for resolving the conflict's final status, rooted in the core legal principle of self-determination.

The Attrition of a Mandate

Despite the clarity of its mandate, MINURSO has never been able to conduct the referendum. The process stalled on the crucial technical step of voter identification⁹. The UN's Identification Commission (MINURSO IDC) began its work based on the 1974 Spanish census, which identified approximately 74,000 Sahrawis¹². Morocco, however, insisted on the inclusion of an additional 120,000 people from lists of tribes it claimed were also Sahrawi but resided in southern Morocco. This was widely viewed by the Polisario Front and international observers as a transparent attempt to alter the demographic balance of the electorate in its favour¹.

When the MINURSO IDC completed its provisional voter list in 1999, which largely adhered to the Spanish census and seemed to favour the pro-independence side, Morocco lodged over 130,000 appeals, effectively paralysing the process.⁴⁸ In 2001, Morocco formally reversed its position and declared it would no longer support a referendum that included the option of independence¹.

In the face of this obstruction, the Security Council's approach began to shift. Instead of taking measures to enforce the original Settlement Plan, its resolutions started to exhibit a "mandate drift" by omission. The language gradually pivoted away from explicit calls for a referendum. Recent resolutions, heavily influenced by the "Group of Friends of Western Sahara" (the US, UK, France, Russia, and Spain), now consistently emphasise the need to achieve a "realistic, practicable, enduring, and mutually acceptable political solution to the question of Western Sahara based on compromise"¹⁰. This formulation, while appearing pragmatic, strategically omits any mention of the referendum or the option of independence.

This represents a de facto abandonment of the Settlement Plan without a de jure decision to terminate it. MINURSO's mandate is renewed annually, but its core purpose—the referendum—is politically dormant, reducing its function almost entirely to ceasefire monitoring 46. This creates a dangerous precedent where a party to a conflict can indefinitely obstruct a legally mandated process until the international community's political will erodes, effectively rewarding intransigence and allowing the conflict to be managed rather than resolved.

Morocco's Autonomy Proposal: A Legitimate Exercise of Self-Determination?

In 2007, Morocco formally presented its "autonomy plan" as an alternative to the referendum. The plan proposes a significant degree of self-governance for the territory, which would be known as the "Sahara autonomous region," but under the explicit and non-negotiable sovereignty of the Kingdom of Morocco 10. Under this framework, Morocco would retain exclusive powers in "royal domains," including defence, external relations, and constitutional and religious matters 52.

This proposal has gained significant traction among powerful states. The United States recognised Moroccan sovereignty in 2020, and France, Spain, and the UK have all endorsed the autonomy plan as the "most serious, realistic and credible" basis for a solution 32. However, a legal critique of the plan reveals its fundamental incompatibility with the principle of self-determination.

International law, as codified in UNGA Resolutions 1541 (XV) and 2625 (XXV), outlines three legitimate outcomes for the self-determination of an NSGT: emergence as a sovereign independent state; free association with an independent state; or integration with an independent state 10. Crucially, any of these outcomes must be the result of the "freely expressed will of the people concerned" 49. Morocco's proposal fails this test because it "rules out, by definition, the possibility for the independence option to be submitted" to the Sahrawi people 52. It is an offer of devolved power, not an exercise of self-determination. By accepting this plan as the only basis for a solution, its international backers are attempting to redefine self-determination not as a process of free choice, but as a predetermined outcome of limited autonomy, thereby prioritising a state-centric solution (preserving Morocco's claimed territorial integrity) over a people-centric right (the Sahrawi right to choose their own destiny).

Economic Dimensions of the Conflict: The Law of Natural Resources

The Western Sahara conflict is not merely a dispute over territory and sovereignty; it is also a struggle over valuable natural resources. The ongoing exploitation of these resources, primarily phosphates and fisheries, is not only a consequence of the occupation but a primary driver of its perpetuation. This section examines the conflict through the lens of international economic law, arguing that the illegal exploitation of these resources implicates not only Morocco but also third-party states and corporations that participate in this economy.

Permanent Sovereignty over Natural Resources in NSGTs

The governing legal principle is that of Permanent Sovereignty over Natural Resources (PSNR). This principle, first articulated during the decolonisation era and now widely recognised as a norm of customary international law, is enshrined in foundational UN documents like UNGA Resolution 1803 (XVII) and Article 1 of both International Covenants on Human Rights 53. It holds that all peoples have the inalienable right to freely dispose of their natural wealth and resources.

In the specific context of Non-Self-Governing Territories, this principle creates a trust relationship. The resources of the territory are held in trust for the benefit of the people of that territory until they can exercise their right to self-determination. Any exploitation of these resources by an Administering Power, or in this case, an Occupying Power, is permissible only if it meets a strict two-pronged test: it must be conducted (1) for the benefit of the people of the territory, and (2) in accordance with their wishes 56.

This standard was authoritatively articulated in the 2002 UN Legal Opinion by Hans Corell. He was asked by the Security Council to clarify the legality of mineral resource exploitation in Western Sahara. His opinion concluded that while exploration activities might be permissible, any exploitation that proceeds "in disregard of the interests and wishes of the people of Western Sahara" would be in violation of international law 57. The Occupying Power is not a sovereign owner but a temporary administrator with a fiduciary duty to the beneficial owners—the Sahrawi people. Any deviation from this duty constitutes a breach of trust and an illegal act.

The Jurisprudence of the Court of Justice of the European Union

While the UN's political organs have been paralysed, the Court of Justice of the European Union (CJEU) has emerged as an unexpected and powerful judicial forum for the vindication of Sahrawi rights. Through a series of landmark rulings beginning in 2016, the CJEU has rigorously applied public international law to the EU's economic agreements with Morocco, with profound consequences 59.

In its foundational 2016 judgment in *Council v. Front Polisario*, and in several subsequent rulings, the Court has consistently held that:

1. ***Separate and Distinct Status:*** Western Sahara has a "separate and distinct" status from the Kingdom of Morocco under international law. Therefore, general references to "Morocco" or its "territory" in international agreements do not include Western Sahara 61.
2. ***Consent of the People:*** For an international agreement to legally apply to the territory of Western Sahara, the "consent of the people of Western Sahara" is an absolute requirement. This is derived from the customary international law principle of the relative effect of treaties (*pacta tertiis nec nocent nec prosunt*), which holds that a treaty cannot create obligations for a third party without its consent 42.

3. Legal Standing of Polisario: The Polisario Front, as the UN-recognised representative of the Sahrawi people in the political process, has the legal standing to bring actions before EU courts to defend the rights of its people 42.

4. Annulment of Agreements: Based on these principles, the CJEU has repeatedly annulled the decisions of the EU Council to extend the application of EU-Morocco agricultural and fisheries agreements to Western Sahara, finding that the consent of the Sahrawi people was not obtained 61.

This line of jurisprudence has effectively created a policy of "legal differentiation" within the EU's external relations, obligating EU institutions to distinguish between Morocco proper and the occupied territory of Western Sahara 64. The CJEU has transformed a political problem into a legal one with tangible economic consequences, demonstrating how a supranational court can enforce international norms that are flouted in more politicised forums like the UN Security Council.

Plunder or Development? The Cases of Phosphates and Fisheries

Applying these legal principles to the main economic activities in Western Sahara reveals a pattern of illegal exploitation

Phosphates: The territory contains some of the world's largest phosphate deposits, which are mined at Boucraa by a subsidiary of Morocco's state-owned OCP Group and exported to international markets 1. Morocco argues that it invests heavily in the infrastructure and development of the region, thus benefiting the local population 35. However, this "development" argument is legally insufficient. The primary legal test is not whether some benefit accrues to the territory, but whether the exploitation is in accordance with the wishes of the people. The Sahrawi people, through their representative, the Polisario Front, have consistently and vehemently opposed this mining, labelling it "plunder" 35. Since the "wishes" criterion is clearly not met, the activity is illegal under international law, regardless of any infrastructure investment Morocco makes, which can itself be viewed as a means of cementing its illegal occupation.

Fisheries: The waters off the coast of Western Sahara are among the richest fishing grounds in the world 57. For years, the EU-Morocco Fisheries Partnership Agreement allowed European vessels, primarily Spanish, to operate in these waters in exchange for substantial financial compensation paid to the Moroccan government 58. As definitively established by the CJEU, this arrangement is illegal. The agreements were concluded without the consent of the Sahrawi people, and the financial benefits flowed to the Occupying Power, not the people of the territory whose resources were being extracted 65. The Court's annulment of these agreements has halted this direct European participation, but the underlying issue of Morocco's illegal licensing of these waters to other international fleets persists.

In both cases, the exploitation of Western Sahara's natural resources constitutes a continuing violation of international law, implicating not only Morocco as the Occupying Power but also any third-party state or corporation that knowingly participates in and benefits from these illegal activities.

Conclusion: An Unresolved Conflict and the Credibility of International Law

The conflict in Western Sahara represents a case of "arrested decolonisation." A clear legal framework for its resolution, based on the *jus cogens* right of the Sahrawi people to self-determination, was established decades ago. This framework, centred on a UN-supervised referendum, has been rendered inert by a combination of one party's persistent obstruction, the strategic geopolitical and economic interests of powerful third states, and the resulting paralysis of the UN Security Council. The legal right is clear; the political will to enforce it is absent.

This protracted stalemate poses a significant threat to the credibility of the international rules-based order. It suggests that for people and territories not deemed strategically critical by major powers, fundamental rights can be indefinitely suspended by political calculus. The Moroccan occupation of Western Sahara is a direct violation of the UN Charter's prohibition on the acquisition of territory by force, yet it has been allowed to consolidate for nearly half a century.

Amid this political failure, the jurisprudence of the Court of Justice of the European Union offers a potential path forward. By rigorously applying principles of public international law, the Court has demonstrated that independent judicial bodies can uphold fundamental norms and create tangible pressure even when political institutions are deadlocked. The CJEU's insistence on the "separate and distinct" status of the territory and the requirement of the Sahrawi people's consent has provided a powerful legal tool for challenging the economic underpinnings of the occupation.

Ultimately, the case of Western Sahara serves as a sobering reminder of the gap between the promise of international law and its application. The enduring conflict is a testament to the fact that without enforcement and political will, even the most fundamental legal rights can remain illusory, leaving a people's destiny hostage to the interests of states and the realities of power politics.

QARMA

1. In the context of a Non-Self-Governing Territory under occupation where the de jure Administering Power has become passive, what specific legal mechanisms, beyond Security Council action, could be invoked to compel the fulfilment of its "sacred trust" obligations under Chapter XI of the UN Charter?
2. Given the CJEU's distinction between the "people" (the demos for self-determination) and the "population" (the current inhabitants), how should this principle be applied to resolve the long-standing dispute over voter eligibility for the UN-mandated referendum, and what are its implications for other protracted conflicts involving demographic change?
3. If Morocco's presence is legally an occupation, what is the extent of third-party state responsibility for engaging in economic relations with the Occupying Power that entrench the occupation, particularly in light of the ICJ's erga omnes findings in the Wall advisory opinion?
4. Can the progressive shift in the language of UN Security Council resolutions from a clear mandate for a "referendum" to a more ambiguous call for a "mutually acceptable political solution" be legally interpreted as an implicit modification or supersession of the 1988 Settlement Plan, or does the original agreement retain its full legal force until explicitly?
5. Considering the SADR's full membership in the African Union and its partial recognition globally, what is the legal status of bilateral treaties it concludes concerning the portion of Western Sahara it controls (the "Free Zone"), and how should these agreements be treated by non-recognising states and international organisations under the principle of *pacta sunt servanda*?

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