

Assessment of the Personal Envoy of the Secretary-General for Western Sahara

1. During my visit to the region, I told each of my hosts that I stood by the conclusions I had drawn in my first briefing to the Security Council on 18 January 2006. As the Council had made it clear from the outset that it could only contemplate a consensual solution to the question of Western Sahara and, more specifically, had not reacted in 2004 when Morocco decided that it could not consent to any referendum in which independence was an option, I had concluded that there was no pressure on Morocco to abandon its claim of sovereignty over the Territory and, therefore, that an independent Western Sahara was not a realistic proposition. I felt it necessary to reiterate this conclusion, because it might have become obscured by the fact that both the Moroccan proposal and that of the Frente Polisario were on the agenda of the Manhasset negotiations.
2. My interlocutors in Tindouf and Algiers did not contest my analysis, but disagreed strongly with my conclusion; first, because international legality had to prevail, and second, because the circumstances I described as 'reality' might change.
3. My conclusion that an independent Western Sahara is not an attainable goal is relevant today because it lies at the root of the current negotiation process. In my briefing to the Security Council in January 2006, I observed that once the Council recognized that Morocco would not be made to give up its claim to Western Sahara, it would realize that there were only two options: indefinite prolongation of the deadlock or direct negotiations between the parties.
4. On this basis, Secretary-General Annan recommended, first in April and again in October 2006, that the Security Council call on the two parties to enter into negotiations without preconditions. The Security Council did not act on these recommendations. In the second week of April 2007, both parties introduced their respective proposals for the solution of the question of Western Sahara. In his report to the Security Council of 13 April 2007 (S/2007/202), the Secretary-General acknowledged receipt of both proposals and repeated the recommendation to call on the two parties to enter into negotiations without preconditions. Subsequently, in its resolution 1754 (2007) of 30 April 2007, the Security Council took note of both proposals and followed the Secretary-General's recommendation, presumably due to the impact of the Moroccan proposal to negotiate an autonomy statute for the region. And finally, during the first round of the negotiations, on 18 June 2007, I explained to the parties that I had drawn the conclusion that both proposals were on the agenda.
5. Although this procedure cannot be faulted, its outcome is paradoxical. While Morocco's rejection of a referendum with independence as an option had triggered the Council's recourse to recommending negotiations without preconditions, one of the two proposals that are now on the table in these negotiations demands precisely the holding of a referendum with independence as an option. This contradiction may explain why the negotiation process is not leading anywhere: the fundamental positions of the two parties are mutually exclusive. What is an absolute necessity for one is absolutely unacceptable

for the other. For the Frente Polisario, a referendum with independence as an option is indispensable for the achievement of self-determination, whereas Morocco is unable to accept such a referendum, but believes self-determination can be achieved through other forms of popular consultation.

6. As a result, an even more unyielding impasse has established itself right in the heart of the process that was meant to show a way out of the impasse brought about by Morocco's rejection of the Baker Plan (Peace Plan for Self-Determination of the People of Western Sahara) in 2004 (S/2004/325). A month after the end of my latest tour of the region from 5-15 February 2008, the parties and neighbouring countries met again in Manhasset, from 16-18 March 2008, for the fourth round of their talks. As had been the case in the first three rounds, from 18-19 June and 10-11 August 2007 and 7-9 January 2008, there was hardly any exchange that could be characterized as negotiations. Since April 2007, the equal treatment the Secretary-General had allotted to the two proposals had been progressively modified by the Security Council through the addition of certain references to the Moroccan proposal. First, in resolution 1754 (2007), the Council had inserted the words "welcoming serious and credible Moroccan efforts to move the process forward towards resolution" (fifth preambular paragraph) and called upon the parties to take into account "the developments of the last months" (paragraph 2), and later, in resolution 1783 (2007), it had expanded the latter phrase to: "taking into account the efforts made since 2006 and developments of the last months." In Manhasset, I reminded the delegations that these insertions were integral parts of the two Security Council resolutions, as was the Council's "taking note" of both proposals.

7. Both parties repeatedly commented on the exact meaning of resolutions 1754 (2007) and 1783 (2007), and, it goes without saying, they attached paramount importance to very different elements. For the Frente Polisario, all that matters is that both proposals are on the table, while according to Morocco the Council has established a clear order between the two. This exercise in textual explanation may be intellectually challenging, but it does not yield the kind of authoritative interpretation that induces the parties to reconsider their positions and to negotiate a compromise solution. What is needed is clearer guidance from the Council itself. I am, of course, aware of the constraints under which Security Council resolutions come into being; but the answer to the vital question of whether one proposal has priority over the other cannot be left to the inevitably controversial interpretation of a number of indistinct phrases. If the Council cannot make a choice, the parties cannot either.

8. There is no conceivable compromise between the parties' views on the role of a referendum with independence as an option. However, I had hoped that the parties, who at the conclusion of the second round of talks agreed that the current *status quo* was unacceptable, would sooner or later show some willingness to explore the implications of possible movement on the basis of the principle that "nothing is agreed until everything is agreed;" but in four rounds of talks, no sign of such willingness has been detected. Therefore, the process is at a standstill, despite the agreement to meet for a fifth round at a date still to be determined.

9. Much will now depend on the interaction between the Security Council's adoption of a new resolution before the end of April, and that fifth round of the negotiation process. If the Council simply extends the process begun by resolution 1754 (2007) and continued by resolution 1783 (2007), there is no doubt that the fifth round will be no different from the first four, and the process will be rightly regarded as deadlocked. Yet, this seems the most likely outcome because in the wider international community the feeling that the *status quo* in Western Sahara is unacceptable is far less prevalent than the feeling that, on balance and all alternatives considered, it may be the least disadvantageous option. Numerous countries consider the *status quo* quite tolerable because it relieves them from the necessity of making painful choices, such as taking sides between Algeria and Morocco. Consolidation of the *status quo* may well be the natural outcome – so to speak, the *default mode* – of the negotiation process.

10. Apart from what the Security Council may or may not be able to do, countries that have close ties with either party might make a greater effort at counteracting that party's tendency to overestimate the strength of its position. Both parties are quick to interpret positive comments from third countries as support for their cause. I have the impression that the prevalence of this phenomenon is responsible for a large number of misconceptions that weaken the political will to search for compromise solutions. In the international community, there is a widespread view that legally the Frente Polisario has the stronger case, but that it is not incumbent on the Security Council to pressure Morocco to pull out of Western Sahara thirty-three years after its taking possession of the Territory. It is as if the Frente Polisario hears only the first part of this sentence, and Morocco only the second. By far the greatest misconception in this category must be the belief that once the current negotiations have foundered, the Security Council will realize that the question of Western Sahara can only be solved by means of a referendum with independence as an option and take action accordingly.

11. If the negotiations end in stalemate again, the continuation of the *status quo* seems unavoidable. It is highly unlikely that in such a situation the Security Council would unanimously lend its full support to one of the two proposals. Yet, the stalemate would have been caused by the fact that the process was launched with two proposals on the table, one that requires a referendum with independence as an option, and the other that rules that out. A way out of this dilemma might be a tentative and temporary change of focus.

12. To initiate this, the Security Council might ask the parties:

- to reconfirm their acceptance of the principle that "nothing is agreed until everything is agreed";
- to temporarily (e.g. for six to nine months) remove both proposals from the agenda of the talks;
- to negotiate, this time really without preconditions but on the temporary assumption that there will not be a referendum with independence as an option and that, therefore, the outcome will necessarily fall short of full independence.

In addition, the Council might announce its intention to evaluate the process at the end of the trial period. If at that time it perceives the contours of a possible political solution, it may decide to extend the trial period; if it does not, the *status quo* – with the existing incompatible positions of the parties – will resume of itself.

13. I am aware that the removal of the two proposals from the table would be largely symbolic. Still, as the negotiations are hindered by the fact that two irreconcilable proposals are on the table, the right solution might be to remove both of them. Of course, they would not cease to exist; but their status would be clear: they would just be the parties' goals, to be negotiated between them on the basis of two realities:

- (for the Frente Polisario:) that the Security Council will not make Morocco accept a referendum with independence as an option;

- (for Morocco:) that the United Nations does not recognize Moroccan sovereignty over any part of Western Sahara.

It is important to be as explicit about the latter as about the former because, in the context of the current negotiation process, Morocco so consistently refers to its sovereignty over Western Sahara that it would seem advisable to clarify that this can only express a Moroccan claim, so that in case of an unexpected breakdown of the negotiations there will be absolute clarity about the status of Western Sahara as disputed territory.

14. From the outset, I have emphasised the need to respect political reality alongside international legality. Morocco's physical possession of Western Sahara is political reality, but so is the reality that no country has so far recognized its sovereignty over the Territory. This fact is linked to international legality; the two concepts do not exist in separation. What matters is how political reality and international legality interact to enable us to take the best decisions in real life. I do not accept the view that taking political reality into account is a concession or a surrender, and that it is wrong ever to settle for less than pure legality. The choices to be made are not limited to the dilemma between international legality and political reality. There is also a moral dilemma that comes to light when the virtue of international legality is weighed against the consequences of its pursuit for the people of Western Sahara in real life. The main reason why I find the *status quo* intolerable is that it is too readily accepted, not only by uncommitted onlookers in distant lands, but also by deeply involved supporters of the Frente Polisario, who do not live in the camps themselves but are convinced that those who do would rather stay there indefinitely than settle for any negotiated solution that falls short of full independence.