István Harkai:

THE CLASH OF INTERNATIONAL LAW AND INTERESTS OF GREAT POWERS THROUGH THE GLASS OF WESTERN SAHARA

ABSTRACT: *During the survey of the hidden corner of Northwest Africa, the author attempted to introduce the case of Western Sahara, the people living in the conflict zone, the parties of the conflict between Morocco and the Polisario Front, the roots of the conflict and the basics of humanitarian law, the human rights abuses and the living conditions in the refugee camps in Algeria in several other notes.*[1] *The impact of the principle uti possidetis on the relations and peace of African states was also demonstrated, and mentioned the initiatives of the United Nations in order to organise the referendum in Western Sahara within the framework of MINURSO.*[2] *The situation in the Eastern basin of the Atlantic Ocean is still unsettled, as a frozen conflict evolved. Meanwhile, most of the territory of Western Sahara is still under Moroccan occupation. This situation threatens the future of the Saharawi nation gives a chance the Polisario to continue the fight in a more radical way.*[3]

This essay introduces the clash between the rules and norms of international law and the practice and interest of the great powers, which follow the legal norms in accordance with double standards.

KEYWORDS: *Western Sahara, Morocco, MINURSO, Polisario, France, United States, Spain, Siyar, sovereignty, statehood, natural resources, trade law, international law, European Court of Justice, International Court of Justice*

COLLISION OF THE *SIYAR* AND MODERN INTERNATIONAL LAW

In 1960 the General Assembly of the United Nations (hereinafter: General Assembly) adopted Resolution 1514 (XV) of 14 December 1960, which was the *Declaration on the Granting of Independence to Colonial Countries and Peoples*. This document declared that the colonial world order has to be demolished without hesitation as soon as possible.[4] In 1963 the General Assembly declared, that Western Sahara has to be considered as a *non-*

[1] Harkai, I. "Humanitárius és emberi jogi jogsértések, valamint a menekültek helyzete Afrika utolsó „gyarmatán"". *Afrika Tanulmányok* 9/1. 2015. 55–72.

[2] Harkai, I. "Négy konfliktus – négy mandátum: A nyugat-szaharai, az angolai, a namíbiai és a közép-afrikai ENSZ békemissziók mandátumainak összehasonlító elemzése". *Szakmai Szemle* 13/3. 2015. 35–53.

[3] Harkai, I. „Terrorfellegek Nyugat-Szahara felett?". *Felderítő Szemle* 15/1. 2016. 58–66.

[4] Valki, L. "A nemzetközi jog sajátosságai; A népek önrendelkezési joga; Az állam szuverenitása; Háború, erőszak, agresszió; Az erőszak és az önvédelem vitatott kérdései". In Kende, T. et al. (eds), *Nemzetközi jog.* Budapest: Complex Kiadó, 2014, 80.

self-governing-territory.[5] This statement was relevant, as the province had been a Spanish colony since 1884. The Polisario Front was established in 1973 by a group of students who were determined to fight for the freedom of the Saharawi nation.[6]

Spain, as an administering power of a colony, was obliged by a General Assembly resolution adopted in 1966 to take steps in organizing the referendum[7]. Because the neighboring Morocco and Mauritania announced armed intervention in case the voters had voted for the independence of Western Sahara, the United Nations requested Spain to postpone the referendum until the International Court of Justice issued its advisory opinion in the case of Western Sahara.[8] The question was whether Western Sahara was *terra nullius* – „no man's land" – in the time of the Spanish colonisation, and if not, what the nature of the relationship between the Saharawies and the Moroccan sultan and Mauritania was.

It is interesting that the case gave chance to the International Court of Justice, to express its opinion in the question, whether it has jurisdiction over advisory opinions. It was necessary because Spain argued, that the International Court of Justice (hereinafter: Court) had jurisdiction over the case of Western Sahara.

In its answer the International Court of Justice confirmed the principle that the approval of Spain is not necessary, as the Court will formulate an advisory opinion demanded by the General Assembly. The approval of a country is only necessary in legaly bindig procedures, or in litigations.[9]

In its advisory opinion the Court also expressed that Western Sahara at the time of Spanish colonization was not *terra nullius*, as the chiefs had sovereignty over the local tribes, and the Spaniards got in contact with them, forcing them to recognise Spanish authority. If Rio de Oro was not a terra nullius, there had to be some kind of relations between the local population and the neighboring powers. The answer to this question from the Court perfectly and sharply highlights the conflict between the traditional Islamic International Law, the *Siyar,* and modern international law, dominated by the interests of the western powers.

In the second question, Morocco tried to prove the sovereignty of the Moroccan monarchs over the Southern tribes. The Court refused this point of view, and emphasized, that the Moroccan sovereignty was only titular, as the sultans neither collected tax from the permanently wandering tribes, nor made effort to maintain a stable administration, nor resisted the foreign occupation of Western Sahara.[10]

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[5] Epstein, P. "Behind closed doors: "Autonomous colonization" in post United Nations era – The case for Western Sahara". *Annual Survey of International & Comparative Law* 15. 2009. 107.; UN General Assembly. „Report of the committee on information from non-self-governing territories, Annex III". 1963. A/5514.

[6] Besenyő, J. "A nyugat-szaharai konfliktus, az önállósodási küzdelem kezdete: a Nemzetközi Bíróság döntése és a „zöld menet"". *Kül-Világ* 6/2. 2009. 37–57.

[7] "Questions of Ifni and Spanish Sahara". UN General Assembly Resolution No. 2229 (XXI.). 20 December 1966.

[8] Besenyő, J. "A nyugat-szaharai konfliktus…". 111.

[9] Kahan, R. "Building a protective wall around terrorists: How the International Court of Justice's ruling in the legal consequences of the construction of a wall in the occupied Palestinian territory made the world safer for terrorists and more dangerous for member states of the United Nations". *Fordham International Law Journal* 28/3. 2004. 852–854.

[10] "Western Sahara: Advisory Opinion of 16 October 1975". Internationl Court of Justice. 101. http://www.icj-cij.org/docket/index.php? p1=3&p2=4&case=61&code=sa&p3=4, Accessed on 22 November 2016.

Rabat was not void of legal ground, when it referred to the historical rights and religious ties, as traditional Islamic International Law consists of such formulas, which could prove the Moroccan claims in Western Sahara. Although the religious ties between the tribes and the nomads are indisputable, neither the practice of the International Court of Justice, nor modern international law recognises personal but territorial sovereignty.

That is why the Court did not accept a point of view which stated that subjects who belonged under the religious sovereignty of the Moroccan Sultan belong under his political sovereignty as well.

On the other hand, the Court did not contest the religious ties or even the alliance between the nomads and the Sultan, but there is no evidence, which proves, that the Saharawies did accept the authority of the Moroccan Sultan.[11]

The Siyar was developed more than a thousand years ago. It served as a useful tool in defining and maintaining the relations between the unified *Islam Empire* and the rest of the world. According to its nature, it related more to the person of the monarch, than to territoriality.

This approach – considered archaic nowadays – is the main reason, why Siyar is unacceptable for modern international law, which considers the territorial authority as the most important factor.[12]

The "Islamic International Law" was created in the 8th century, when jurists worked out the legal rules regarding the relations between the Abbasid Calpihate and the non-Islamic world. This order rested upon the conception that the depositary of the sovereignty was the ruler of the empire and not the territory itself. Namely these two are the same. In this approach every territory where Muslims live belong to the Islamic State (dar-ul-Islam, the house of Islam). All those lands which are not Muslims belong to the *dar al-harb*, to the house of war. These lands were not considered as full states as in the world only a unitary Islamic state can exist. The principles of Siyar regulated the relationship of the above mentioned entities and Islam. These principles consisted of the law of war and peace, the treatment of prisoners, and the trade among Islamic and non-islamic states.[13]

The sovereignty-theory of Siyar is parallel with the above mentioned ruler-oriented approach. The depositary of the sovereignty is the ruler himself, he exercises such power which was assigned by God – he is representing the will of God –, so the authority of the caliph is only limited. In this person-centered theory, the nationality and culture of nations under the rule of the caliph was completely inessential until they were Muslims and recognized the reign of the caliph. People with other religions were also the subjects of the caliph if they lived in the empire of Islam. If they recognized the reign of the caliph, they enjoyed his protection. Muslims lived outside the empire under foreign power, considered as subjects of the caliph as well, which demonstrates well the irrelevance of territorial sovereignty.[14]

The primacy of Islamic Empire among states rests upon the assumption, that non-Muslim states have only a temporary capability to make contracts and enter into agreements with

[11] Dickson, C. and William, S. "The future of Islamic legal arguments in international boundary disputes between Islamic states". *Washington and Lee Law Review* 55/2. 1998. 531.

[12] Dickson and William. "The future of Islamic legal arguments…". 532.

[13] Dickson and William. "The future of Islamic legal arguments…". 536.

[14] Dickson and William. "The future of Islamic legal arguments…". 537.

the Islamic Empire. Contracts concluded with them cannot be based on reciprocal and consonant will because only the empire of the true believers has full capacity to contract.[15]

As long as the undivided Islamic Empire existed, the Siyar functioned well. But the enormous empire – which extended from the Maghreb to the Arabian Peninsula – fell into parts due to the geographical distance, particular interests and cultural diversity. The new situation lead the jurists to adopt the Siyar onto the divided and plural Islamic world in order to give an answer to the question, how the particular Islamic successor states can enter into relations with each other and the rest of the world.

The realist minority was defeated by orthodox scientists who ignored the fact that the Islamic world would have been fragmented if the successor states had recognised the religious supremacy of the caliph. During the Ottoman Empire, the religious and political supremacy reunited in the hand of the sultans. After World War I, the Ottoman Empire fell apart and the revision of the archaistic Siyar became necessary again.[16]

To the question of how a foreign territory can fall under Islamic control, Islamic law gives the answer. The methods include military conquest, subjugation, voluntary submission and other relations based on contracts. The importance of the above mentioned issue resides in the question, who is the owner of the natural resources of a given territory? Islamic law makes difference between private ownership, communal property, and state-owned property depending on how the given territory fell under the rule of Islam.[17]

Territories gained by conquest are common property of the whole Muslim community, and they have to be administered by the leader of the community. It is because God is the only one who is responsible for conquering, and it would be inappropriate if only those could enjoy the benefits who took part in conquering it. Private individuals could gain only limited provision in these territories, mostly with the aim of cultivation and to collect its treasures and resources.[18]

If a territory surrenders willingly and converts to Islam, it has the right to keep the possession relations. In those lands which had successfully resisted the armed attempt of subjugation and then made a treaty with one of the states of the Muslim community, the possessions remained in the shape they were before the clash with Islam.[19]

If a land is barren, it is not lucrative, it is considered to be as a no man's land under Islamic law, also known as terra nullius. Hence, with occupation every Muslim could gain private ownership over it.[20] We could consider Western Sahara as a no man's land, if it was not populated by 10 thousand nomadic Berbers. Most of Western Sahara is a desert, therefore it is completelly unsuitable for agricultural activites, moreover, the Saharawies themselves did not know how to husband the soil, so they used Subsaharan slaves to cultivate lands.[21]

These questions are interesting if we take into consideration the fact that the soil there hides natural resources. In Western Sahara phosphate is the most important mineral, besides that the Atlantic waters are rich in fishstock.[22] Hereby it is important to note, that according

[15] Dickson and William. "The future of Islamic legal arguments…". 542–543.
[16] Dickson and William. "The future of Islamic legal arguments…". 538–539.
[17] Dickson and William. "The future of Islamic legal arguments…". 560.
[18] Dickson and William. "The future of Islamic legal arguments…". 562.
[19] Dickson and William. "The future of Islamic legal arguments…". 563.
[20] Dickson and William. "The future of Islamic legal arguments…". 564.
[21] Dickson and William. "The future of Islamic legal arguments…". 571–572.
[22] Besenyő, J. "The society of the Sahrawians". *AARMS* 7/4. 2008. 667–677. http://www.zmne.hu/aarms/docs/Volume7/Issue4/pdf/08bese.pdf, Accessed on 22 November 2016.

to the Law of the Sea, the coastal state has sovereignty even over the exclusive economic zone. So if the International Court of Justice accepted the arguments of Morocco in the case of Western Sahara, the Kingdom would be entitled to exploit all the natural resources due to the historical-religious ties, as the Islamic law allowes the exploitation to the head of the Muslim community, who has to exercise this right in favour of the community.[23]

Hence Morocco struggled to convince the International Court of Justice that in the light of the above mentioned, Rabat has every right to claim sovereignty over Western Sahara, because the Southern nomadic tribes were connected to the Sultan of Morocco with religious ties, moreover, they were allies of the monarch who is the descendant of the Prophet, thus it is irrelevant that the Sultan does not have political sovereignty over the Saharawies.[24]

The Court did not recognize this point of view, because the Sultan did not excercies any kind of political authority in Western Sahara. Intrestingly, and it was ephasized in the minority report of Judge Ammoun, the religous connection could be relevant as it was acknowledged in the cases of Ireland, Pakistan and Bangladesh.[25]

WESTERN SAHARA STUCK IN LEGAL STATUS

If we follow the principles laid down in the advisory opinion of the International Court of Justice, we have to see that Morocco unlawfully used force and conquered its Southern neighbor. Morocco did it under circumstances, which could be considered as a pending legal situation. Obviously it is an analogy, but this situation carries the possibility of a future entitlement. The Saharawies were definitelly in such situation.

As a Spanish colony, they did not have self-government but they were entitled for self-determination.[26] Spain was obliged by the UN Resolution of 1966, which bound Madrid to make it possible to the Saharawies to excercies their right for self-determination, and to decide on a referendum whether they want to live under Spanish rule, or they want to be an independent state. First the colonizers were unwilling to organize the referendum, and later, in November 1975, following the advisory opinion of the International Court of Justice and the „Green March", they decided to evacuate Spanish Sahara.

Legally a quite interesting, multiplayer situation evolved. In accordance with international legal norms the colonizers were bound to let the Saharawies practice their right for self-determination. They postponed that, moreover, they ceded the territory in the Madrid Accords to Morocco and Mauritania, which two powers have occupied Spanish Sahara. The third party, the Saharawies, stuck in colonial status as until today, did not have the chance to declare sovereignty and self-determination recognized by international law and the international community.

As a result, we have to consider Morocco as a successor of Spain as a colonizing power, so the Saharawies are still in a pending legal status. The fact, that the United Nations established a peacekeeping mission and adopted a mandate – MINURSO – in order to organize the referendum, also proves this assumption.

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[23] Dickson and William. "The future of Islamic legal arguments…". 566.

[24] Dickson and William. "The future of Islamic legal arguments…". 546–547.

[25] Dickson and William. "The future of Islamic legal arguments…". 548.

[26] Besenyő, J. "The Occupation of Western Sahara by Morocco and Mauritania". *Tradecraft Review* Special Issue. 2010. 76–94. http://knbsz.gov.hu/hu/letoltes/szsz/2010_1_spec.pdf, Accessed on 22 November 2016.

Because the balance of forces won't change within a reasonable time, the only actor, which is able to represent the Saharawi interests is the Polisario Front, which was founded during the Spanish Colonial times, and created not only an administrative system and military forces, but declared the Saharawi Arab Democratic Republic as well.

In the long-lasting civil war, the Polisario was defeated by Morocco but its legitimation and political influence survived, moreover, some territories remained under Polisario control in the Eastern part of the country. On the other hand, those territories are unfit for high standard of life, settled lifestyle, and proper economic activities.

Therefore, de facto a Western Sahara exists, which fulfills all the requirements of statehood. The criteria of statehood were ascertained in the Treaty of Montevideo in 1933, these are as follows: 1.) permanent population; 2.) well defined and described territory; 3.) government; 4.) capability to enter into relations with foreign nations.[27]

According to the survey of the Spanish authorities, in 1974 73,497 Saharawies lived in Spanish Sahara. In the absence of further requirements it is irrelevant how many people live in the state and it is also irrelevant, whether they are settled or nomadising.[28]

The borders of Western Sahara were drawn in the colonial times so those are parallel with the borders of Spanish Sahara. 90% of the former lands of the Saharawies were occupied with most of the population and the economic centers, however, the Polisario controls a narrow sector in the East and South so the territorial claims are fulfilled.[29]

While the local population struggled against the Moroccan occupation in a military way, they established their own political system with an elected popular assembly, cabinet, and bureaucracy, which command the military activities of the Polisario at the same time. This government is independent from any other authority, and it has the capability to represent the Saharawi nation at international level. The best proof of this statement is the fact that there are more than 60 states which have already recognized Western Sahara as an independent state. Moreover, the country and the Polisario are full members of the African Union.[30]

EXPLOITATION OF NATURAL RESOURCES IN WESTERN SAHARA

In the previous two chapters the author attempted to underline, that Western Sahara is still in a colonial status under Moroccan occupation. In order to maintain the status quo, the international community gives a helping hand to Morocco. France consistently supports Morocco and balks every effort of the United Nations to settle the conflict or to extend the mandate of MINURSO with a monitoring system of human rights. Hence the reality is that the Moroccan occupation will be permanent, yet it will not approve or legalize the presence of the Moroccan army and the exploitation of natural resources. As an occupying power, the Moroccan government is not allowed to use the resources, minerals, and incomes of Western Sahara to satisfy and facilitate its own economic interests. What it could do legally is the usage of resources only to cover the expenses of the occupying forces and the public administration of the province.[31]

[27] Epstein. "Behind closed doors…". 119.
[28] Epstein. "Behind closed doors…".
[29] Besenyő, J. "Saharawi refugees in Algeria". *AARMS* 9/1. 2010. 67–78. http://www.zmne.hu/aarms/docs/Volume9/Issue1/pdf/07.pdf, Accessed on 22. November 2016.
[30] Besenyő, J. "Saharawi refugees in Algeria". 123.
[31] Besenyő, J. "Saharawi refugees in Algeria". 134.

What really happens, the phosphate, oil and fishstock raised the interest of Western companies. Texaco, Pan American Hispano Oil, Standard Oil and Shell,[32] the American Kerr McGee, and the TotalFinalElf oil syndicates are interested in the exploitation of crude oil.[33]

It is indisputable that the investments in Western Sahara can be profitable if the political situation is stable and an unwanted guerrilla war does not disturb the business. Morocco can guarantee this, so Rabat is an attractive business partner. It is obvious that because of their political-economic interest the great powers close their eyes and pretend they do not know about the fact that Morocco used force to occupy a former colony. But the United Nations and the international law have a different point of view.

In 1974 within the United Nations, the member states adopted the *Charter of Economic Rights and Duties of States.* It says in paragraph 2, Article 16: *„No State has the right to promote or encourage investments that may constitute an obstacle to the liberation of a territory occupied by force."* This act is carried out mainly by Morocco through exploiting resources and selling them on the world market.[34]

With the provisions of the abovementioned Charter, the *Charter of the United Nations*[35] declares in Article 73, that the exploitation or economic utilization of a non-selfgoverning territory could occure only with the consent of the local population. During the utilization, the administrative power has to ensure the political, economic, social, and educational advancement of the local citizens.[36]

If our previous conclusion is correct, namely an independent Western Saharan entity exsists, wich is exclusively allowed to exploit the resources of the soil and water, then the ambitions of the Polisario to ban the Moroccan products coming from the occupied zone from the European market may succeed.

The European Court of Justice adjudicated a decision which declared that the agricultural-trade agreement with Morocco cannot be applicable for those products which were produced in the occupied zone of Western Sahara.[37]

Not only the European Union but Norway, a non-EU-member and a member of the European Economic Area, is also sanctioning vessels which are sailing under Norvegian flag and fishing in Western Saharan waters.[38]

However, Morocco made a fisheries partnership agreement with the European Union in 2005. Under this agreement the member states of the EU were permitted fishing on Western Saharan waters.

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[32] Wilson, C. "Foreign Companies Plundering Western Saharan Resources: Who is Involved and What is Being Done to Stop This?" In Arts, K. and Pinto Leite, P. (eds), *International Law and the Question of Western Sahara*. Leiden: IPJET, 2007, 249.

[33] Epstein. "Behind closed doors…". 135.

[34] Wilson. "Foreign Companies Plundering Western Saharan Resources…". 251.

[35] "Charter of the United Nations". https://treaties.un.org/doc/publication/ctc/uncharter.pdf, Accessed on 27 November 2016.

[36] Epstein. "Behind closed doors…". 134.

[37] Case T-512/12, Front Polisario v Council of the European Union. Judgement of the General Court of 10 December 2015. http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:62012TJ0512 and Case C-104/16 P, Council of the European Union v. Front Polisario, 13 September 2016. http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:62016CC0104, Accessed on 27 November 2016.

[38] Connet, D. "Western Sahara: Africa's last colony takes struggle for self-determination to European courts". Independent. 23 January 2016. http://www.independent.co.uk/news/world/africa/western-sahara-africas-last-colony-takes-struggle-for-self-determination-to-european-courts-a6830216.html, Accessed on 10 April 2016.

Exactly 119 European fishing vessels are permitted to fish for fishstocks. Meanwhile, Morocco received 144 million Euros in exchange.[39] According to estimations 70-80% of fishstocks caught in the Atlantic Ocean come from the waters of Western Sahara. Among the European states it is Spain, which enjoys most of the advantages of the fishery agreement. Madrid received 80% of the Moroccan permissions.[40] Later the European Court of Justice revised this percentage.[41] In order to protect the fishstocks, the Western Sahara Resources Watch established the *„Fishing Elswhere"* Committee. In this organisation delegates from 21 states, NGO-s, politicians and experts are working together in order to put an end to the fishing activities of foreign powers in Western Saharan waters. They are also trying to force the parties of the fishing agreement to modify it.[42]

Polsiario took dead steps to convince the Western companies doing business with Morocco to enter into agreement with them instead of Rabat. Although this approach would be lawful, it is far from the realities, as the government in exile has no influence, power and autority over the resources located in the occupied zone, which means, foreign companies will put aside their revulsion against Morocco and forget about the fact, that Rabat clearly keeps Western Sahara under unlawful occupation. If a company is more fastidious about the situation in the western corner of Africa, it will enter into an agreement with Morocco, where conditions that the exploitations will start only if the status of the contested territories are settled.[43]

Phosphate is being mentioned in this essay several times. Western Sahara could be the second largest importer of this mineral, but it is not, because it is Morocco, which exploits and exports phosphate onto the world market. When the Spanish disclaimed their rights in the Madrid Accord in favour of Morocco and Mauritania, they wanted to arrange the issues of the phosphate-mining and the share from the profit. The agreeing parties decided that 65% of Spanish Fosbucraa company would be transfered to the Moroccan state while Madrid would keep the rest 35% for 25 years. After the occupation, 1,600 employees were made redundant and replaced by Moroccan citizens. The construction of the infrastructure of Bu Craa was carried out by American, German, French and Spanish companies. Furthermore, the French contracted on the water supply of the mines and Spain made the port of Huelva available for Moroccan phosphate cargo.[44] From El Ayun 3 million tons of Phosphate set sail while the total export of Morocco and Western Sahara reaches the 10 million tons. The biggest importer of phosphate is the United States, but Columbia Mexico, Venezuela, Australia, New Zealand, Bulgaria, Croatia, Poland and the Baltic states are also importing it from Morocco.[45]

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[39] Epstein. "Behind closed doors…". 135.

[40] Steinbach, A. "The Western Sahara dispute: A case for the ECJ?". *Columbia Journal of European Law* 18/3. 2012. 418.

[41] Wilson. "Foreign Companies Plundering Western Saharan Resources…". 262.

[42] Wilson. "Foreign Companies Plundering Western Saharan Resources…". 263.

[43] Wilson. "Foreign Companies Plundering Western Saharan Resources…". 259.

[44] Hagen, E. "International Participation in the Phosphate Industry in Occupied Western Sahara: The Local Content and Global Participation". In Arts, K. and Pinto Leite, P. (eds), International Law and the Question of Western Sahara. Leiden: IPJET, 2007, 269–270.

[45] Hagen. "International Participation in the Phosphate Industry…". 270–271.

The disputed legal status of Western Sahara is more than relevant, if we look on it through the glass of the international trade law. The country of origin of a given product is not irrelevant as it is based on the principle of territoriality in accordance with the Trade Law. If a product comes from a contested territory, we can choose between two theories.

One is the *practical-trade approach,* and the other is the *political-sovereignty approach*, which latter one will not be described exhaustively.[46]

The first approach can be detected in the practice of trade of the United States and France with Morocco. The USA-Moroccan free trade agreement is aimed only at the liberalization of the commerce, it does not mention that there is a contested territory under Moroccan authority. The fact, that Morocco has de facto sovereignty over Western Sahara, is completely fit for the interest of the undisturbed trade.[47]

In its Point a), Paragraph 5, Article XXVI the *General Agreement on Tariffs and Trade* mentiones, that the provisions shall be applied to those territories, for which the administering power is responsible.[48] Morocco, as an occupying power, is certainly responsible for the improvement of administration, welfare of the population, and economy. The European Union adopted this practical point of view by accepting the fact that the economic and commercial life of Western Sahara is directed by Morocco. The trade agreement between the EU and the Kingdom does not mention the legal status of Western Sahara, it only says in Article 94., that the agreement shall be applied for the whole territory of Moroccan Kingdom. Furthermore, the provisions regarding the products of Morocco are applied to those which are coming from Western Sahara.[49]

However, the EU is following the very same practice in the case of Taiwan. The Republic of China (Taiwan) is not recognized by most of the relevant powers in the world due to the diplomatic pressure of the People's Republic of China (mainland China). Yet, Taiwan is one of the most dynamic actor in the world economy, so the reality, in favour of the free trade, overshadows those sovereignty-theories which are soaked by political convictions.

ON THE GROUND OF REALITY – POSSIBLE FUTURE VISIONS

We saw how the international law and the solidarity of international community support Western Sahara and the Saharawies, who definitelly are in the position to exercise their right to self-determination, but until now, they were encumbered in it. They acclaimed the Saharawy Arab Democratic Republic, which fulfils the requirements of statehood, but its sovereignty does not expand to the lands, which are under Moroccan occupation. Rabat will not withdraw its military, and no one will force to do that, at least it seems there is no state which would risk a military intervention in the region.

Morocco is protected by the General Assembly Declaration 2625 (XXV) *on Principles of International Law concerning Friendly Relations and Co-operation among States in*

[46] Hirsch, M. "Rules of origin as trade or foreign policy instruments? The European Union policy on products manufactured in the settlements in the West Bank and the Gaza Strip". Fordham International Law Journal 26/3. 2002. 574.

[47] Hirsch. "Rules of origin as trade or foreign policy instruments?". 577.

[48] Hirsch. "Rules of origin as trade or foreign policy instruments?". 578.

[49] Hirsch. "Rules of origin as trade or foreign policy instruments?". 579–580.

accordance with the Charter of the United Nations.[50] In the light of the rules of this declaration, the states are prohibited to intervene in other states' relations, because every form of intervention is a possible threat to international peace and security.[51]

Besidea Algeria, there is no state which directly intervened in the conflict between the Saharawies and Morocco. The Eastern neighbor of the Kingdom has supported the Polisario since the beginning and accomodated many Saharawy refugees. Meanwhile the biggest supporters of Morocco are France and the United States. Whithout them there is no agreement on the status of Western Sahara, because both of them have right of veto in the UN Security Council. France and the United States have kept the good relations since the second half of the 20th century. During this time Morocco proved, it is a good ally in the fight against communism and terrorism.[52] The United States did not support an independent Western Sahara, because it feared that a new, Soviet-oriented entity would cause trouble in the Maghreb. This concern was based on the fact, that the Polisario had good realtions with Cuba and Libya. Meanwhile Morocco was a reliable ally, Washington supported Rabat militarily (by sending weapons and advisors) and economically as well. In 2004 a free trade agreement was concluded, furthermore the Kingdom is one of the most important non-NATO-member military allies.[53]

France hurries to show its gratitude for the Moroccan alliance, which gives good geopolitical and economic positions to France in the Maghreb. Due to the French diplomacy, the mandate of MINURSO was never enlarged with a human rights monitoring mechanism.[54] According to Paris, there is no need for a new failed state in Northwest Africa, which later could fall under Algerian influence destabilising Maghreb. Sometimes the French diplomacy goes too far. With bribery and blackmail persuaded African states – for example Benin, Burkina Faso, Chad, Togo, Republic of the Congo – to revoke the recognition of the Saharawy Arab Democratic Republic.[55]

Good-neighborhood relations are strategically important for Spain as well, because Spanish companies invested a lot in Morocco, besides Spain is one of the biggest beneficiary of the fishing and phosphate mining.[56] It is almost a matter of life and death for Spain to secure the safety of the Canary Islands, Ceuta and Melilla. This was the most important factor, why Spain conceded Spanish Sahara to Morocco and Mauritania. On the other hand, Madrid emphasized: Spain will never recognize the sovereignty of Morocco and Mauritania over Western Sahara, they are considered only as administering powers.

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[50] "Resolution adopted by the General Assembly 2625 (XXV). Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations". United Nations. UN A/RES/25/2625. http://www.un-documents.net/a25r2625.htm, Accessed on 11 April 2016.

[51] Epstein. "Behind closed doors…". 136.

[52] Epstein. "Behind closed doors…". 136.

[53] Zoubir, Y. "Geopolitics and realpolitik as impediments to the resolution of conflict ad violations of international law: The case of Western Sahara". In Arts, K. and Pinto Leite, P. (eds), *International Law and the Question of Western Sahara*. Leiden: IPJET, 2007, 291.

[54] Clarke, J. and Purvis, K. "Leaked cables: Morocco lobbied UN to turn blind eye to Western Sahara in 'House of Cards' operation". *The Guardian*, 17 June 2015. http://www.theguardian.com/global-development-professionals-network/2015/jun/17/leaked-cables-morocco-united-nations-western-sahara-house-of-cards, Accessed on 27 November 2016.

[55] Zoubir. "Geopolitics and realpolitik…". 289.

[56] Epstein. "Behind closed doors…". 138.

In the Madrid Accords not only the previously mentioned administering rights but also the economic interests of the parties were settled. The two main issues were fishing and phosphate mining. After concede of Western Sahara, Morocco assured Spain the undisturbed right of fishing on Western Sahara waters.[57]

All in all, the Spanish attitude is ambivalent. On one hand it is a serious security issue to maintain good relations with Morocco.

On the other hand, citizens of Spain are sympathetic with the Saharawies, and they do not symphatize with the Moroccans after the terrorist attacks in 2004, which were committed by Moroccan and Spanish citizens of Moroccan origin.[58]

Because the Polisario will never ever defeat the Moroccan army and liberate Western Sahara and the great powers won't be involved in the conflict on the side of the Polisario, for the average Saharawies a compromise would be the best solution. Under this criteria Morocco would give territorial autonomy to Western Sahara within the Kingdom of Morocco. This would legitimize the Moroccan presence and it would make the referendum irrelevant. Postponing the referendum or making it irrelevant is a permanent part of the Moroccan conditions. If the referendum was organized, Moroccan citizens living in Western Sahara would vote, so the majority of the votes would be in favour of staying in the Kingdom. But it could be possible, that the population of Western Sahara would take advantage of the situation and choose to live in an independent and democratic Western Sahara instead of a half-dictatorship.[59]

At the same time, such a step would establish a dangerous precedent. If the Saharawies accepted the narrow and mean offer, and the international community approved the new situation, they would acknowledge the territorial growth achieved by violence. This could be a great reference for Russia in the case of Crimea. For that matter, the autonomy offered by the Kingdom would be limited. According to the Moroccan constitution, the King has absolute authority in military and foreign affairs, religious issues and education.[60] This is unacceptable for the Polisario and was not supported by Algeria either, so the deadlock still exists.[61]

The tendencies of world politics show, that the small entities, if they have a huge amount of valuable natural resources, cannot compete with regional or global powers, due to their mere size (China, India, Russia, the United States, the European Union, Canada, Australia, and Brazil) or economic capacity (the EU, United States, or China). States of the Third World inevitably have to decide whether they stay at the level of a nation-state or integrate into a bigger entity to represent their interests as members of a major political-economic-military union. This is the only way to expect to take them seriously. Regrettably, it is this new world order in which the de facto status of Western Sahara should be recognized and the conflict has to be settled somehow, even if all the legal factors act against it.

Once the Maghreb countries made an attempt towards regionalism. On 17th February 1989 Algeria, Mauritania, Morocco and Tunisia signed the agreement on the Arab Maghreb Union in Marrakesh. The aim was to facilitate the political and economic integration.

[57] Zoubir. "Geopolitics and realpolitik…". 293.
[58] Zoubir. "Geopolitics and realpolitik…". 294.
[59] Zoubir. "Geopolitics and realpolitik…". 286–287.
[60] Epstein. "Behind closed doors…". 139.
[61] Zoubir. "Geopolitics and realpolitik…". 285.

If we look on the common traditional, cultural, religious and linguistic roots, we can see, this initiative would be successful.[62]

Unfortunatelly, the Arab countries are divided not only in the Middle East but in Northwest Africa as well. The political conflicts are balking fruitful and effective co-operation. The case of Western Sahara is a spike under the nail of the Magreb countries because Algeria is one of the biggest supporters of the Saharawies. Furthermore, the Magreb states did not have a common opinion on the Iraqi invasion of Kuwait or the Mauritanian-Senegalese border dispute, in which Senegal was supported by Morocco.

The variance of the forms of government should not be a problem, but the internal political relations and arrangements are. For example, Morocco reminds us of an absolute monarchy, on the other hand the Tunisian political system is more liberalized and open. Libya became a failed state after the revolution and civil war after 2011. Libya cannot be part of a new Maghreb Union until it resolves its political problems. The relations to the West are also different. Morocco and Tunisia maintain good relations with the Western powers, in Libya the Islamic State gained space, but before 2011, during the time of Gaddafi, the relations with the West were paradoxically good.[63]

It is important to note that 27 years ago, when the Union was founded, the member states barely traded with each other.[64] If they established a fruitful co-operation, it would make their adaptation to the requirements of the global trade much easier. It would not be necessary to sign individual contracts with the EU or the USA, but they could enter into negotiations together as one single entity. All those rules adopted by the Maghreb Union, would be automatically applicable in all member states.

Unified actions and steps in the internal affairs would strengthen the internal ties, which would give a chance for catching up because all the Arabic countries are much weaker and more vulnerable than the Western states. It is true, that they are extremly rich in mineral resources, but the profit is realized only partly in the Arab countries, and even those limited profits concentrate in the hands of exclusive elite. They can influence the world market through the price of the oil, but the benefit which they receive in exchange is spent on Western and Asian luxury goods, machines, devices, which means, the funds return back to their origin, namely the developed countries. As a consequence of the global warming, desertification, and water-shortage, the states of the Fertile Crescent and North Africa will have to import not only industrial products, but also food and water, which are the most basic needs of their population. To ease this situation they have to settle their disputes and put an end to the civil wars and other internal and external conflicts immediatelly, then they have to step on the way of regionalization and launch a wide range of social, economic and political modernization. In spite all of this it seems, that the Maghreb Union will pass away, although it is the opposite which would be desirable.

[62] McKeon, R. "The Arab Maghreb Union: Possibilities of Maghrebine political and economic unity, and enhanced trade in the world community". *Dickinson Journal of International Law* 10/2. 1992. 264.

[63] McKeon. "The Arab Maghreb Union…". 276–277.

[64] McKeon. "The Arab Maghreb Union…". 278.

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