

MOROCCO AND THE AFRICAN UNION: ACUTE CRISIS FOR THE “COMPLETE UNION”*

Fas ve Afrika Birliđi: “Eksiksiz Birlik” için Akut Kriz

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Abstract

In this article the Western Sahara conflict and Africa' dealings with it is analyzed. Since the formation of the first continental organization in the Western Sahara, conflict has been on the agenda. However, that through admission of the SADR, which Morocco later reacted by cessation of membership became crisis for OAU. As Morocco becomes a member of the AU like SADR, this crisis became acute as those two countries do not recognize each other. AU, SADR and Rabat have different suggestions for the conflict which making the unity questionable. However, the crisis has not threatened the existence and functioning of the OAU and the AU yet.

Keywords: Membership, AU, Western Sahara, Crisis, Morocco.

Öz

Bu makalede Batı Sahra sorunu ve Afrika'nın bu sorunla nasıl baş ettiđi incelenecektir. Kıtasal ilk örgütlenmenin kurulmasından bu yana Batı Sahra sorunu kıta gündemindedir. SADC'nin üyeliđinden sonra Fas'ın tepki göstererek üyelikten ayrılmasıyla konu ABT için krize dönüşmüştür. Aralarında SADC'nin de bulunduğu AfB üyelerine Fas'ın dahil olmasıyla bu sessiz kriz akut krize dönüşmüştür; çünkü SADC ve Fas birbirlerini tanımamakta fakat aynı kurum içinde yer almaktadır. AfB, SADC ve Fas sorunun çözümü için kurumun diđer üyelerinin olduđu gibi farklı önerilere sahiptir. Dolayısıyla, bu kriz hem AfB'nin hem de Afrika'nın bütünlüğünü sorgulatacaktır. Fakat sessizken sonradan akut haline gelen kriz bugüne kadar ABT ve AfB'nin varlığını, fonksiyonunu ciddi olarak tehdit etmemiştir.

Anahtar Kelimeler: Üyelik, AfB, Batı Sahra, Kriz, Fas.

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Introduction

The Western Sahara issue has become a crisis for the African continental framework once again, due to Morocco's accession to the African Union (AU). In addition to the Western Sahara crisis, Rabat's membership bid constitutes another crisis for the African continental framework. Concerning the Western Sahara conflict, Rabat and the African continental political framework have had "troubled relationship".¹ In spite of this "troubled nature", several African states have had positive relations with Rabat. There was already an existing crisis because of the Western Sahara conflict, but now Morocco's membership constitutes another crisis. That is to say the silent Western Sahara crisis between Morocco and the Saharawi Arab Democratic Republic (SADR) becomes an acute crisis with Morocco's membership. In another words, the crisis stems from the fact that the AU, Morocco and the SADR have pursued different policies over the membership issue.

Morocco is one of the most crucial states in African politics. Its political relations with the West, its problematic relations with Algeria, its economical weight can be identified as indicators for her place and importance in the continent. However, for a long period of time, Morocco was outside the continent's political, institutive and administrative framework. She left its predecessor, the Organization of African Unity (OAU) in the 1980s. Yet, in 2016 Morocco's attitude has changed just as her relations with Africa's administrative and political structure: she declared its demand to be an African Union member.

Although the Western Sahara is situated in the North Africa, its articulation with the right of self-determination broadens the scope of the issue to the whole continent. Among direct and indirect parties of the conflict it has remained as a crisis, but foreign relations of these actors and the right of self-determination broaden the crisis to the whole continent. Earlier the OAU and now the AU have become battle ground or contested place for the parties

1 Terence McNamee et al., *Morocco and the African Union: Prospects for Re-Engagement and Progress on the Western Sahara*, Discussion Paper 1, *The Brenthurst Foundation*, 2013, p. 20.

of the Western Sahara conflict. The Western Sahara crisis that manifested itself in the SADR’s and now Morocco’s membership crisis has both legal and political dimensions. Because African political, institutional and administrative framework’s policies concerning Western Sahara resulted in Morocco’s decision to leave the continental structure and till her admission the issue remained as the primary reason for her voluntarily exclusion. Despite this fact the differences still exist between the Kingdom and the AU.

Morocco’s demand to be a member of the African Union highlights the Western Sahara issue’s effect on the African politics. The political and strategic balance within the AU, relations between leading states of the institution, Moroccan-African relations and policies of the AU and African states on the Western Sahara issue are the striking points regarding the crisis. Moreover, it recalls the significance and the role of international law on the resolution of this Maghrebi problem.

The Western Sahara: by History, by Politics and by Legal Aspects

With the termination of the Spanish governance over the region in 1963, the UN listed the Western Sahara as non-self-governing territory.² The same year the UN Decolonization Committee included it in its list of the areas to be decolonized. Till that day the Western Sahara issue has been on the list remaining the sole and last issue regarding Africa’s decolonization process according to the UN. Henceforth, it has not only legal, political but also symbolic and historical significance for the African political and legal institutions.

Morocco and the Polisario Front (*Frente Popular de Liberación de Saguía el Hamra y Río de Oro*, PF)/SADR have been the two conflicting parties with opposite aims. Till the 1991’s ceasefire, Rabat and the PF were at war to have ultimate sovereignty over

2 “Western Sahara 2015 Profile”, *The UN*, http://www.un.org/en/decolonization/pdf/Western%20Sahara%202015%20profile_15Dec2015.pdf, (Date of Accession: 24.04.2016).

the Western Sahara. After Spain's withdrawal from the region, the SADR was declared as an independent state by the Front in February 1976 in the refugee camps in Algeria.³

The SADR has had two goals on different fronts: national liberation and "a diplomatic campaign to secure international recognition of the new state."⁴ The PF has aimed total independence of the Western Sahara, and has acclaimed that it has been the representative of Sahrawi refugees. The SADR and the PF have based these claims on the right of self-determination which universally accepted by the international law. The Front's self-determination claims are based on non-self-governing territory concept⁵ and the Western Sahara's status in the UN's decolonization list. Henceforth the PF, has demanded application of referendum with independence as an option to implement the right of self-determination.

On the other hand, from Morocco's point of view the Western Sahara problem has to be solved in accordance with the principles of inviolability of its borders and preservation of its territorial unity. Morocco, based on its interests and political framework, has politically reevaluated these two fundamental principles of international law, Africa's customary law and jurisprudence. She has based its claims on political dimensions since political theses rather than legal ones conform to its resolutions like the autonomy plan.

Morocco has put several suggestions forward to solve the Western Sahara issue. The suggestions were based on the internal options of the right of self-determination like autonomy and development plans for the region. According to Moroccan autonomy plan dated 2006, "Autonomous Saharan Region" will be

3 Anthony G. Pazzanita, "Legal Aspects of Membership in the Organization of African Unity: The Case of the Western Sahara", *Case Western Reserve Journal of International Law*, 7(1), 1985, p. 128.

4 Gina J. Naldi, *The Organization of African Unity: An Analysis of Its Role*, Monsell, New York 1999, p. 54.

5 "Right of Non-Self-Governing Territories to Self-Determination Reaffirmed, As Fourth Committee Approves Nine Decolonization Texts", *United Nations: Meetings Coverage and Press Releases*, <http://www.un.org/press/en/2002/gaspd238.doc.htm>, (Date of Accession: 12.12.2014).

created where judiciary, executive and legislative autonomy, and several other issues like infrastructure will be under the control of local administrative unit.⁶ However, defense and foreign affairs will be under the Moroccan control. To Rabat, this plan should be elaborated in conjunction with “free association”. Morocco has another proposal named as “Southern Provinces”. It is based on decentralization and development of the region and several regions of the Kingdom for “integrating the south into a new decentralized system”.⁷

African continental organizations both the OAU and the AU involved in the issue and supported the self-determination of the Western Sahara. Generally, these organizations and Morocco have had opposite policies henceforth this situation created and further sustained the crisis in the continent. Due to these opposite claims and resolution demands, the Western Sahara issue cannot be solved. To put it in another way, self-determination cannot be implemented for decades.

Morocco’s problematic relations with Africa’s continental framework add further tension and inhibits not only the resolution process of the Western Sahara conflict but also the functioning of this framework. Against the SADR’s membership to the OAU, Morocco withdrew from the Organization. It further “pledged to have the SADR suspended from the pan-African organization and swore that it will not sit in the same room as the SADR”.⁸ Yet, in 2010s Rabat decided to be a member of the AU which revealed that Morocco wants to highlight some political dimensions of the Western Sahara issue rather than the legal ones due to the fact that these legal conditions accepted by the continental organization have remained unchanged. Henceforth reliance on this political dimension indicates that current process will sustain the conflict’s inclination towards a crisis.

6 S. J. Spector, “Negotiating Free Association between Western Sahara and Morocco: A Comparative Legal Analysis of Formulas for Self-Determination”, *International Negotiation*, 6, 2011, p. 111.

7 Marina Ottaway, *Morocco: “Advanced Decentralization” Meets the Sahara Autonomy Initiative*, Woodrow Wilson Center, 27, May 2013, p. 1.

8 Yasmine Hasnaoui, “Morocco and the African Union: A New Chapter for Western Sahara Resolution?”, *Arab Center for Research & Policy Studies*, 2017, p. 2.

The OAU and Morocco: The Crisis Begins

The OAU and its stance on the Western Sahara issue were reasons for eruption of the crisis: Morocco's policies and the OAU's policies were contradictory and in the end Rabat decided to leave the Organization. To some, the Western Sahara conflict "undermined the stability"⁹ of the Organization.

The main purposes and principles of the OAU indicate its approach regarding the Western Sahara. According the Article II of the OAU Charter; defending sovereignty, territorial integrity and independence of African states; giving an end to all forms of colonialism in Africa, and promoting unity and solidarity of African states¹⁰ were guiding and founding principles.

The OAU elaborated and recognized the Western Sahara conflict as a colonial issue henceforth a resolution had to be found and implemented according to self-determination rule accepted by the international law. In 1964, by supporting the Western Sahara's decolonization the OAU gave its first sign of its involvement in the conflict.¹¹ In October 1966 the OAU's political committee called for the region's independence. Moreover, *Decolonization and Apartheid Decision* (CM Res 206/XIII), taken by the Council of Ministers during its Thirteenth Ordinary Session in 1969 highlighted "the legitimacy of the struggle launched in...Spanish Sahara"¹² and recommended its members to support materially, financially and diplomatically these kind of movements.¹³ Specially it underlined the fact that the people of the Spanish Sahara had inalienable right to self-determination in accordance to the UN General Assembly's famous resolution 1514 (XV). Also it called Spain to implement the decolonization of the region.¹⁴

9 Naldi, *op. cit.*, p. 52.

10 "The OAU Charter", *African Union*, https://au.int/sites/default/files/treaties/7759-sl-oau_charter_1963_0.pdf, (Date of Accession: 27.03.2016), p. 3.

11 Naldi, *op. cit.*, p. 56.

12 Sidi M. Omar, "OAU/AU and the Question of Western Sahara", *SADR Embassy to the AU*, <http://www.sadr-emb-au.net/oauau-and-the-question-of-western-sahara/>, (Date of Accession 28.05.2016).

13 *Ibid.*

14 *Ibid.*

Referendum as a tool to proceed on the implementation of self-determination of the people of Western Sahara¹⁵ is an example on the OAU’s stand on the Western Sahara issue because it always called for referendum. After Rabat revealed its desire to hold referendum, the OAU created the Implementation Committee with tasks of establishing ceasefire and conducting referendum.¹⁶ The Ad Hoc Committee that visited region made some recommendations that turned to be the Resolution 114 (XVI) in July 1979 at the 16th Session of the OAU Assembly. One of its recommendations was the Sahrawi peoples’ exercise of their self-determination right through referendum with two options: independence or maintenance of status quo.¹⁷

Certain additional steps taken by the OAU have to be mentioned that can be recognized as indication of the Organization’s policies. The PF got the observer status¹⁸ in the OAU. Last but not least membership of the SADR to the OAU is an important example for the OAU’s policies especially on the implementation of self-determination. In 1980, SADR made a move to solve the issue or to fasten the resolution process and applied to the OAU for membership.

However, since the start of the OAU-Moroccan institutional relations, discord based on opposing policies accompanied those relations. Due to her opposition to some clauses of the OAU’s Charter, Rabat made reservations for not being judicially responsible. It made reservation on the 3th Article and its third clause that was related with state sovereignty and territorial integrity of the borders. The Kingdom’s reservation was based on “authentic borders” argument¹⁹ centered on historical rights and sovereignty over borders. In addition, Rabat put reservation to the Article 2(1). Regarding to both articles Morocco stated that its signing of the Charter could not be recognized neither as

15 “Legal Opinion on the Request of the Kingdom of Morocco’s Admission into the AU”, *Pambazuka News*, <https://www.pambazuka.org/pan-africanism/legal-opinion-request-kingdom-moroccos-admission-au>, (Date of Accession: 16.02.2017).

16 Naldi, *op. cit.*, p. 63.

17 Naldi, *op. cit.*, p. 61.

18 Naldi, *op. cit.*, p. 59.

19 “Legal Opinion on the Request...”, *loc. cit.*

“acknowledgement of the facts that Rabat refused to recognize nor as renunciation of the pursuit of its rights by the legitimate means at our disposal”.²⁰ Rabat also aimed to prevent any interference from the OAU Charter, like changing of its borders, through putting respective clauses into its Constitution. According to the 42th Article of the Constitution “He (The King) is the Guarantor of the Independence of the country and of the territorial integrity of the Kingdom within its authentic borders”.²¹

Furthermore, cessation of membership was a component to the strategy of Morocco’s relations with the OAU since her membership. After the OAU Liberation Committee’s recommendation to recognize the PF as the legitimate representative of the Sahrawi people Morocco and Mauritania replied by declaring their intentions about quitting the OAU.²²

SADR’s membership to the OAU facilitates current crisis’ analysis regarding the Western Sahara conflict and Morocco’s AU membership. One crucial issue to be underlined is the SADR’s legal capability to apply for membership. It acted according to the 28th Article of the OAU Charter: “Any independent sovereign African State may at any time notify the Secretary-General of its intention to adhere or accede to this Charter”.²³ A simple majority of the member states was required to get the admission.²⁴ Thus, it can be said that secretary-general and simple majority of the OAU members perceived the SADR as a state.

In February 1982, the invitation on the membership to the Western Sahara was made by then Secretary-General²⁵ and the SADR was accepted as the 51th member. In 1983, it was formally admitted as a member state²⁶ and in spite of Morocco’s rejection, in

20 Naldi, *op. cit.*, p. 57.

21 “Legal Opinion on the Request...”, *loc. cit.*

22 Naldi, *op. cit.*, p. 58.

23 “Charter of the Organization of the African Unity”, *University of Minnesota Human Rights Library*, http://hrlibrary.umn.edu/africa/OAU_Charter_1993.html, (Date of Accession: 07.05.2016).

24 Giuseppe Schiavone, *International Organizations: A Dictionary: Fourth Edition*, MacMillan Press, London 1997, p. 219.

25 Pazzanita, *op. cit.*, p. 135.

26 Legal Opinion on the Request...”, *loc. cit.*

1984 the OAU recognized the SADR as a full member. 26 members that called for the SADR's admission to the OAU recognized the Republic.²⁷ By the year of 1985, 30 African states recognized the SADR. Not only for the OAU but also for certain states recognition of SADR was directly related with Morocco's attitudes and policies regarding the resolution of conflict. For example, Rabat's refusal to cooperate in holding referendum²⁸ triggered recognition of the SADR.

The OAU's reasons to grant membership to the SADR can be analyzed along political and legal lines. The political aspect was directly linked to the Western Sahara issue because Morocco's attitude and policies affected the Organization's policies. For instance, Rabat recognized Algeria as a direct party to the conflict while the PF had no legal or international existence for the Kingdom.²⁹ Thus, by deciding to grant membership the OAU wanted to demonstrate the actual parties of the conflict.³⁰

By granting membership to the SADR, the OAU might want to facilitate the resolution of the conflict.³¹ Rabat's certain policies and activities like her unwillingness to conduct referendum triggered some states to support the SADR's inclusion.

Moreover, through the membership issue the OAU indicated Morocco the valid principles of the African institutional, political and legal framework directly related with mechanisms on resolution of the conflict. Hence, the OAU wanted to show Morocco and other possible “irredentist” African states that the borders left from the colonial states³² would be not changed and any alterations regarding borders would not be accepted.³³

27 Schiavone, *loc. cit.*

28 Naldi, *op. cit.*, p. 65.

29 Pazzanita, *op. cit.*, p. 153.

30 *Ibid.*

31 *Ibid.*

32 19th and 20th century formed the peak point of African colonialism. European states formalized the secession of Africa at 1884-85 Berlin Conference. For detailed information please check the Mehmet Seyfettin Erol-Oktay Bingöl, “Birinci Dünya Savaşı'nın Afrika'ya ve Sömürgecilğe Etkileri”, *Gazi Akademik Bakış*, 7(14), Summer 2014, p. 177-196.

33 Pazzanita, *op. cit.*, p. 152.

The legal dimension of the Organization's actions was directly linked to the core principles of the OAU. The right of self-determination, territorial integrity and inviolability of borders of the colonial state were the fundamental concepts of the OAU that formed its legal, political framework.

The OAU might have valid reasons for SADR's membership however not everyone supported this move and the situation caused tensions. In fact, admission of the SADR created huge divisions among conservative and progressive states that would nearly dissolve³⁴ the OAU. Different and conflicting views among the members regarding the Western Sahara conflict manifested itself on voting procedure of the SADR's admission. Algeria, Angola, Seychelles, Mozambique, Madagascar, Guinea-Bissau and Zimbabwe which supported the SADR's membership; acclaimed that it was sufficient to get simple majority of the 50 members of the Assembly of the Head of States of the OAU. On the other hand, Morocco, the Ivory Coast, Senegal, Tunisia, Nigeria, Sudan and Sierra Leone acclaimed that two-third majority had to be maintained "to admit a state whose very existence was in question".³⁵

After SADR's joining the OAU as a full member, the Organization continued to propose some solutions in accordance with the right of the self-determination. It provided several formulas, peace plans to end the conflict. They included components like establishing cease-fire, registration of voters of referendum and holding a referendum. Also, direct negotiations between Morocco and the PF would be started.

The AU and Morocco: The Crisis Transformed

With the foundation of the AU, the Western Sahara conflict and its related problems were transferred to this new organization. The concepts and principles of the OAU on the Western Sahara issue

34 Naldi, *op. cit.*, p. 56.

35 Schiavone, *loc. cit.*

have been valid for the AU as well. The SADR due to its membership in the previous continental framework is founding member of the AU. Yet, Morocco by her own will remained outside the continental framework for nearly 33 years.

Within the current continental framework, the AU has been supporting the Western Sahara’s self-determination. Its’ principles and decisions have emphasized self-determination that have been in conformity with the SADR’s and the PF’s arguments. Like its predecessor, the AU has used referendum as a tool to implement the right of self-determination of the people of the Western Sahara. The AU has called both the UN General Assembly and the UN Security Council for conducting referendum in the Western Sahara.

The foundation of the AU did not change Morocco’s attitude. The AU’s certain steps were not welcomed by Morocco. To give as an example, the Kingdom did not accept the AU’s decision to appoint a special envoy for the region. To Morocco, her 2014’s refusal was based on nature of the AU’s authority regarding the issue. To Rabat, the AU “had no legal authority to intervene”³⁶ in the Western Sahara conflict.

In spite of this opposition, Rabat somehow reversed its policies and applied for membership. The Kingdom has formally submitted its request for membership in September 2016; signed and ratified the Constitutive Act.³⁷ According to the SADR’s statements, Morocco did not make any reservation in adopting the Constitutive Act.³⁸ According to the Article 29 of the Constitutive Act, any African states can apply for membership.³⁹ The state has to

36 “Morocco Accuses African Union Chief in Obstructing Readmission”, *Reuters*, <http://www.reuters.com/article/us-morocco-africa-idUSKBN13P22H>, (Date of Accession: 04.12.2016).

37 “AU’s Shakespearean Morocco Dilemma: To Admit or not to Admit?”, *Solomondersso*, <https://solomondersso.wordpress.com/2017/01/28/aus-shakespearean-morocco-dilemma-to-admit-or-not-to-admit/>, (Date of Accession: 16.02.2017).

38 “Morocco’s Adherence to AU Constitutive Act, Recognition of Sahrawi State”, *Sahara Press Service*, <http://www.spsrasd.info/news/en/articles/2017/02/06/6972.html>, (Date of Accession: 16.02.2017).

39 Article 29, “Constitutive Act of the African Union”, *African Union*, <http://www.peaceau.org/uploads/au-act-en.pdf>, (Date of Accession: 05.02.2017), p. 13.

notify the Chairman of the Commission of its “intention to accede to the Constitutive Act and to be admitted as a member of the Union”.⁴⁰ According to Article 29/2, simple majority is needed to get admission. Majority of the 54 members had to approve Rabat’s inclusion; in another words 28 member states’ support would be sufficient. The voting was held in the summit of January 2017 and on 30 January 2017 the Kingdom joined the AU and became 55th member state. 39 member states voted in favor and 9 voted against Morocco’s inclusion; including Algeria and South Africa.

The AU is not solely composed of Morocco and its supporters. That is to say the SADR and its allies criticized Morocco’s admission. According to the Foreign Minister of the SADR, Mohamed Salek Ould Salek, Morocco’s current status in the Western Sahara was occupier so the region was under the occupation that contradicted the founding principles of the AU. “The aim and essence of the Union is the liberation of Africa”⁴¹ hence to Salek the Kingdom cannot be member. To Salek, if Morocco wanted to be a member of the AU, then she had to “respect the rules”.⁴²

The Kingdom’s inclusion process did not end easily. Some members wanted to postpone the vote. Certain members demanded to settle certain thorny issues of the Western Sahara conflict and the status of the SADR.⁴³ For instance, a committee was proposed to decide borders between Morocco and the Western Sahara.⁴⁴ It was mentioned that the continent’s several important states like South Africa and Algeria were against Morocco’s admission. To Algiers, it

40 *Ibid.*

41 “Morocco ‘Should Not Rejoin African Union’”, *BBC News*, <http://www.bbc.com/news/world-africa-37941687>, (Date of Accession: 29.11.2016).

42 *Ibid.*

43 Alonso Illueca-Sophocles Kitharidis, “The Impact of Morocco’s Admission to the African Union on the Dispute over the Western Sahara”, *Opinio Juris*, http://opiniojuris.org/2017/03/10/impact-moroccos-admission-african-union-dispute-western-sahara/?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+opiniojurisfeed+%28Opinio+Juris%29, (Date of Accession: 17.05.2017).

44 Celeste Hicks, “Why did the African Union Readmit Morocco After Its 33 Years in the Cold?”, *African Arguments*, <http://africanarguments.org/2017/02/02/how-did-morocco-manage-to-rejoin-the-african-union-after-33-years-in-the-cold/>, (Date of Accession: 10.02.2017).

has no problem with Morocco’s return to the AU however it has to be without preconditions.⁴⁵

Its application for membership also did not change Rabat’s stand. King Mohammed VI’s letter to the AU Summit in Rwanda indicated that Rabat continues to underlie political issues rather than legal dimensions of the Western Sahara conflict. Despite its quest for membership, Morocco insisted on its well-known arguments on the conflict that have been contradictory to the well-established principles of the AU. For instance, in his letter to the AU members King Mohammed VI acclaimed that the region has “unshakeable Moroccan identity” and emphasized that the position on Western Sahara would not change.⁴⁶ In the letter Morocco did not condition her membership on the SADR’s membership’s suspension. That is to say, in spite of the crisis Morocco had desire to be included in the Union.

The AU, since its foundation, as a continental framework, has championed unity among its members including the SADR. Moreover, due the status of the SADR and the impasse nature of the conflict, the Organization has had an important role in this process. Thus, Morocco’s membership and its related process further highlight the AU’s role as it has two members that do not recognize each other and have opposite suggestions that do not solve problem. This situation may disaffect functioning and related policies of the AU especially on the Western Sahara. The main indicator is that Morocco and some of its allies within the AU try to terminate the SADR’s membership. It can be said that the Moroccan membership transformed the existing crisis into an acute one.

Divorce in the “complete” union: expelling of the SADR

Admission of Morocco to the AU membership reveals existence of “the Cold War” within the AU: a member is wanted to be expelled

45 Ayah Aman, “Why Morocco Really Wants Back in the African Union?”, *Al-Monitor*, <https://www.al-monitor.com/pulse/originals/2016/07/morocco-join-african-union-western-sahara-dispute-egypt.html>, (Date of Accession: 05.08.2016).

46 “King Mohammed VI: Morocco Wants to Take Back its Natural Position in Africa”, *Middle East Online*, <http://www.middle-east-online.com/english/?id=79660>, (Date of Accession: 30.11.2016).

from the AU due to the admission of a new member. These conflicting views like expelling a member from the AU can also be seen in member states' policies regarding recognition of the SADR. This situation reveals the political dimension of the Western Sahara issue and indicates that crisis still continues to be in the continental framework. For instance, Senegal's actions regarding admission of both the SADR and Morocco underscore the fact that certain members of the continental structure do not hesitate to stir some tension in the already formed crisis atmosphere. And also, it provides some clue on political dimension of the Western Saharan conflict giving the continental groups' attitude and positions of some member states. After Rabat's request for admission to the AU, Senegal attempted to revoke SADR's membership, but it failed. Moreover, Dakar pursued similar policies in the process of the SADR's admission to the OAU. At that time to Senegal, Morocco's decision to withdraw from the OAU was justified because SADR's admission was a "legal heresy" and it was not even a sovereign state.⁴⁷

After Morocco's request, 28 countries signed a declaration for the suspension of the SADR's AU membership. These states were Benin, Burkina Faso, Burundi, Cape Verde, Comoros, Congo, Côte d'Ivoire, Djibouti, Eritrea, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Equatorial Guinea, Liberia, Libya, Central African Republic, the Democratic Republic of the Congo, Sao Tome, Senegal, Seychelles, Sierra Leone, Somalia, Sudan, Eswatini (Swaziland), Togo, Zambia.⁴⁸ It was claimed that Tunisia, Niger, Mali supported the idea, but they did not sign the document.⁴⁹ Algeria criticized those steps on the ground that the SADR was a founding member of the AU.⁵⁰ The letter was submitted to the then-AU Chairman

47 "Africa: Senegal Faults SADR's Admission into the OAU", *All Africa*, <http://allafrica.com/stories/199908100184.html>, (Date of Accession: 26.06.2017).

48 "28 African Countries Call on the Immediate Suspension of the SADR", *Submit Press Release 123*, <https://newsreleases.submitpressrelease123.com/2016/07/20/28-african-countries-call-on-the-immediate-suspension-of-the-sadr/>, (Date of Accession: 18.08.2016).

49 Ann Marie Wainscott, "Morocco's AU Bid Builds on Years of Strategic Diplomacy", *IPI Global Observatory*, <https://theglobalobservatory.org/2016/07/morocco-african-union-western-sahara-mohammed-vi/>, (Date of Accession: 18.08.2016).

50 "SADR, a Founding Member of AU, Its Suspension cannot be Requested", *Sahara Press Service*, <http://www.spsrasd.info/news/en/articles/2016/07/21/3185.html>, (Date of Accession: 18.08.2016).

Idris Debby and asked “him to take legal action to suspend SADR’s membership, to enable the AU to contribute to the United Nations’ efforts to solve the regional dispute”.⁵¹

Due to the crisis the AU needed to make some clarification on expulsion of a member. The AU Commission stated that “the AU Constitutive Act does not have any provision for the expulsion of any Member State of the Union”.⁵²

Morocco’s admission brings several subjects related with the AU’s membership: suspension or cessation of the SADR’s membership. However, apart from political dimension issue of expelling/revoking of membership has to be elaborated in legal terms as well. According to the 30th Article of the AU’s Constitutive Act, the sole condition for suspension is coming to power of a government of the concerned state through unconstitutional means.⁵³ In that case the state should not be allowed to participate in the activities of the Union. Since this Article is not related with the SADR it cannot be implemented.

Cessation of membership is another subject regarding membership status, but again it is not related with the SADR for the time being. Cessation of membership is the member state’s willingly renouncing its membership. According to 31st Article a written notification given to the Chairman of the Commission will be enough to end membership.⁵⁴

To put it in another words, the AU “has no jurisdiction to derecognize or suspend a member”.⁵⁵ However, if a clause on expulsion of a member is accepted and if the Constitutive Act changes, then probability of terminating the SADR’s membership will be emerged. According to the 32th Article amendments or

51 Aman, *loc. cit.*

52 “Morocco did not Attend or Address the 27th AU Summit in Kigali, Rwanda”, *AU’S Directorate of Information And Communication*, Press Release N°26/27TH AU SUMMIT, http://www.usc.es/export9/sites/webinstitucional/gl/institutos/ceso/descargas/AU_AUC-press-release-Morocco_25-07-16_en.pdf, (Date of Accession: 20.08.2016).

53 Article 30, *op. cit.*

54 Article 31, *op. cit.*

55 Hasnaoui, *op. cit.*, p. 12.

revisions “shall be adopted by the Assembly by consensus or, failing which, by a two-thirds majority” and then all member states have to ratify these amendments or revisions.⁵⁶ To revoke the SADR’s membership Rabat must have the support of the AU’s 28 states.⁵⁷

Even before her admission, relations between Morocco and the AU got tense during the related process. For instance, the Kingdom acclaimed that the AU interfered in its admission process. To the Kingdom, the Organization delayed sending of its request to the AU’s members. Morocco’s Foreign Ministry claimed that Dlamini-Zuma, then-head of the AU Commission, tried to thwart Morocco’s decision to be a member. Therefore, Rabat’s inclusion created some problems which resulted in tension within the AU.

There have been other signs which indicate Morocco’s inclusion might complicate functioning of the AU especially regarding the Western Sahara issue. By not attending the 668th meeting of the AU’s Peace and Security Council on the situation in Western Sahara on 20 March 2017 Rabat “violated the provisions of the AU Constitutive Act and the PSC Protocol”.⁵⁸ Morocco was called to “extend necessary cooperation in conformity with the provisions of the AU Charter and the PSC Protocol”.⁵⁹

Problems for the AU: possible signs of the acute crisis in the future

As one can easily imagine the Western Sahara issue will be the determinant factor on relations between the AU and Rabat. It can be tense and further signs of acute crisis may be seen in the future that Rabat has to clarify its stance on the continent’s politics and

56 Article 32, *op. cit.*

57 Samir Bennis, “Morocco should Return to the African Union”, *The New Arab*, <https://www.alaraby.co.uk/english/comment/2016/8/8/morocco-should-return-to-the-african-union>, (Date of Accession: 19.08.2016).

58 Erica Mumford, “The African Union’s Role in Western Sahara’s Claim of Independence”, <http://www.adelphi.edu/wp-content/blogs.dir/451/files/2017/06/Erica-Mumford-word.pdf?t=1498151399-187003-a>, p. 16, (Date of Accession: 20.09.2017).

59 “Communiqué”, *668th Peace and Security Council Meeting*, <http://www.peaceau.org/uploads/psc-comm-western-sahara-en.pdf>, (Date of Accession: 18.05.2017), p. 2.

its recognition of the AU’s role. The factors that will sustain crisis are still valid in spite of Morocco’s admission so political and legal credibility problem for the AU is emerged.

First and foremost, no conditions set by the AU for Morocco’s admission. Apart from the Constitutive Act, no political and legal burdens were put on Morocco. In return, also the Kingdom accepted that it would put no condition⁶⁰ and reservation⁶¹ for its accession to the AU. Although Algeria and South Africa attempted to put certain conditions for Morocco’s re-entrance into the continental institutional framework, like recognition of the SADR and on formation of a committee to examine the admission process⁶² Morocco was condition-free in its admission to the AU.

Although Morocco readmitted to the Union with no compliance to the AU’s decisions on Western Sahara, at least for now she made and also gained some “concessions”. The SADR has been a member of the AU, and has had a seat within the AU. On the other hand, Rabat’s admission can be recognized as a step back for the SADR due to the fact that Morocco joined the club without recognizing the Republic. However, to the SADR, as Morocco being within the borders of legitimacy of the continental organization, the AU can take some steps to implement referendum in order to make Rabat and the SADR work together.⁶³

Another problem that questions the AU’s legal and political credibility is whether Rabat will accept the AU’s role in Western Sahara conflict. Morocco argued that the AU has not been neutral in the Western Sahara issue⁶⁴ so it cannot participate in the related negotiations. The AU’s role is questioned arguing that the Organization has no legal basis, political role and moral legitimacy

60 “Morocco Rejoins African Union without Conditions”, *Middle East Online*, <http://www.middle-east-online.com/english/?id=81293>, (Date of Accession: 11.02.2017).

61 “Communiqué”, *loc. cit.*

62 Samir Bennis, “Morocco Rejoining AU is a Boon to the Continent”, *The New Arab*, <https://www.alaraby.co.uk/english/comment/2017/1/31/morocco-rejoining-au-is-a-boon-to-the-continent>, (Date of Accession: 19.03.2017).

63 Hicks, *loc. cit.*

64 Mumford, *op. cit.*, p. 15.

to intervene. Such a “recognition” indicates that both the AU and Morocco were aware of the fact that silent crisis might be resulted in bigger crisis with conclusion of Morocco’s admission process.

Another problem for the AU and the Kingdom is that they have different solutions for the Western Sahara issue. As a member, it is expected from the Kingdom to apply articles of the Constitutive Act. Some examples can be given which are directly related with the Western Sahara issue. The SADR is a full member state, then its borders have to be accepted. Article 4 (b) of the Constitutive Act of the African Union, underscores the respect of borders existing on achievement of independence⁶⁵ namely *uti possidetis*.

Morocco will be tested whether it apply the rules on peaceful resolution of the Western Sahara conflict and the AU’s Assembly decisions. According to the Constitutive Act’s 4th Article and the e clause appropriate means for peaceful resolution of conflicts among member states may be decided by the Assembly.⁶⁶ The AU’s stand on the Western Sahara issue is based on the self-determination of the Sahrawi people through conducting referendum with the independency option. Also, the AU recognizes the region as the non-self-governing territory and seeking to protect its integrity.⁶⁷

Self-determination, last but not the least, may stir up tension dependent upon Morocco’s actions. Nevertheless, Morocco’s and the AU’s stands on self-determination will collide. The latter’s perception of self-determination is based on protecting territorial integrity and inviolability of borders. It is based on colonial state and on the notion of people. Moreover, the documents of the UN, the African Charter on Human and Peoples Rights (ACHPR) contains the right of self-determination. It has a peculiar role that can be seen in the Constitutive Act of the AU. Its 3/h article mentions that one of the objectives of the AU is to “promote and protect human and peoples’ rights in accordance with the ACHPR and other

65 “Constitutive Act of the African Union”, *African Commission on Human and Peoples’ Rights*, <http://www.achpr.org/instruments/au-constitutive-act/#3>, (Date of Accession: 19.04.2017).

66 *Ibid.*

67 “Communiqué”, *op. cit.*, p. 1.

relevant human rights instruments”.⁶⁸ Thus, the AU can continue to bring the human rights concept into the Western Sahara conflict; as it has sought for human rights monitoring in the Western Sahara and in the refugee camps.⁶⁹

Referendum would be a conflicted subject as well. According to the 2017 Communiqué of the AU Peace and Security Council, the AU still calls for the referendum. It calls for taking necessary measures and setting time for conducting referendum for the self-determination of people of the Western Sahara in compliance with relevant decisions of the UN, the OAU and the AU.⁷⁰ In the process of Western Sahara conflict’s resolution, referendum has been a thorny issue that parties to the conflict cannot find common way to deal with. For instance, they have had different proposals on the number and identity of the voters. Nearly 130.000 Moroccan settlers’ inclusion into voters list has been the main problem so the PF and Rabat cannot reach to a solution on who will cast vote on referendum. Also based on its autonomy plan Morocco acclaims that conducting referendum will no longer be a realistic option.

The AU like its predecessor accepts the SADR as its member. However, Morocco and some members do not recognize the SADR as an independent state and hence as a member state. This is the most important question to be answered: How these two opposite attitudes conform to each other within the AU? Different states have opposing and changing positions on the Western Sahara as well. The most important device to comprehend African states’ attitude on the Western Sahara especially on self-determination has been recognition of the SADR. Out of 54 members, 38⁷¹ member states of the AU including Algeria, Ethiopia, Nigeria and South Sudan recognize the SADR.

68 Constitutive Act of the African Union, *loc. cit.*

69 “Press Release: African Union Special Envoy for Western Sahara, H.E. Former President Joaquim Chissano Conducts Consultations on Western Sahara in Geneva, Switzerland”, *African Union*, <http://www.peaceau.org/uploads/press-release-au-special-envoy-mission-geneva-feb-2017.pdf>, (Date of Accession: 18.05.2017).

70 “Communiqué”, *loc. cit.*

71 Illueca-Kitharidis, *loc. cit.*

Morocco's support to several states has affected their stand on the Western Sahara issue. Before Morocco's admission some members of the AU pursued certain policies that questioned their position and nature of the Western Sahara conflict. These states changed their policies on the recognition of the SADR. Some African states withhold recognition, some recognized the SADR again. In another words, certain African states have provided several conditions for the maintenance and even for the escalation of crisis in the Western Sahara conflict. Kenya recognized the SADR in 2005, however in 2006 she suspended its diplomatic relations and in 2007 after Moroccan Foreign Minister Mohammed Benaissa visit⁷² it froze its recognition. But when it comes to the year of 2014 Nairobi decided to open the SADR's embassy and so the bilateral relations restarted.⁷³ Malawi is an another interesting example regarding its relation with the SADR. In 1994 it recognized the Republic, but changed its policies six times⁷⁴ and then finally in 2014 Malawi decided to restart bilateral relations with the SADR.

Rabat has established cooperative relations dominantly on security and economics with several African states that brings other states' political influence and interference regarding the process of Western Sahara conflict's resolution. Henceforth the crisis for the AU regarding Western Sahara includes other members. Rabat has referred to threat of secession in the continent through making comparison with the Sahrawi nationalistic struggle and other nationalist/self-determination movements. Moreover, the King took several steps to "guarantee" his country's admission as well. For instance, he made "countless visits to sub-Saharan Africa, signing nearly 1,000 cooperation agreements since 2000".⁷⁵ For example, Tanzania, where the King Mohammed VI paid an official

72 "Kenya Freezes Recognition of SADR", *Autonomy Plan*, <http://autonomy-plan.org/57-kenya-freezes-recognition-of-sadr.html>, (Date of Accession: 08.04.2014).

73 "Opening of Sahrawi Embassy in Nairobi", *Sahara Press Service*, <http://www.spsrasd.info/en/content/opening-saharawi-embassy-nairobi>, (Date of Accession: 08.04.2014).

74 "Malawi Withdraws its Recognition of the so-Called SADR", *Sahara Online*, <http://www.sahara-online.net/Western-Sahara/Malawi-withdraws-its-recognition-of-the-so-called-SADR--1306-2452-3916.aspx>, (Date of Accession: 08.04.2014).

75 Hicks, *loc. cit.*

visit in 2016 declared that she supported Rabat’s claims in the Western Sahara conflict.⁷⁶

The AU members’ contradictory positions on the Western Sahara indicate the crisis has political, strategic and to some extent ideological⁷⁷ dimensions. Certain Africa’s “heavyweight” countries like South African Republic and Algeria have supported the PF and so the self-determination of the Western Sahara in conjunction with the universally accepted principles of international law. To Pretoria, not recognizing the SADR would be contradictory to the South African Republic’s historical struggle, the UN Charter and the African Union’s Constitutive Act.⁷⁸

The SADR and its allies have highlighted the fact that its territory has been under the Moroccan occupation so that “the paramount clauses” of the Constitutive Act like decolonization, territorial integrity, sovereignty and independence are breached with Rabat’s inclusion to the AU. The third and fourth articles, for example, include territorial integrity, respect of borders and non-interference in internal affairs of a member state. Henceforth to the SADR, as the Kingdom became 55th member of the AU then Rabat is ready to accept and implement the AU’s related decisions on resolution of the conflict. The most important legal document that the SADR mainly relies on is the Constitutive Act. Due to the fact that as Morocco being a member must accept and must be ready to implement the Charter. The Kingdom’s adoption of the Constitutive Act without reservations indirectly, implicitly means the Kingdom’s acceptance of the AU’s way of resolution of the conflict and thus recognition of the SADR. To the Sahrawis, now

76 Alpha Kamara, “Morocco Continues AU Moves with Senegal Visit”, *Anadolu Agency*, <http://aa.com.tr/en/africa/morocco-continues-au-moves-with-senegal-visit/680241>, (Date of Accession: 19.11.2016).

77 Ideology is a notion and belief system which helps us to understand the world we live in. For detailed information about ideology please refer to Mehmet Seyfettin Erol-Emre Ozan, “Dış Politika’da İdolojinin Rolü”, Ertan Efeğil-Mehmet Seyfettin Erol, ed., *Dış Politik Analizinde Teorik Yaklaşımlar: Türk Dış Politikası Örneği*, Barış Kitap, Ankara 2012, p. 350.

78 R. S. Clark, “Chapter 4: Western Sahara and the United Nations Norms on Self-Determination and Aggression”, Karin Arts-Pedro Pinto Leite, ed., *International Law and the Question of Western Sahara*, International Platform of Jurists for East Timor, Leiden 2007, p. 12.

Morocco has to end “its occupation of the Sahrawi territories”⁷⁹ because the Kingdom accessed to the AU in compliance with the Organization’s conditions.

Conclusion

Analyzing relations and silent-then-turned acute crisis between Morocco and the African Union compels exploring not only political but also legal aspects of the Western Sahara conflict and the AU’s functioning. Political and legal facts created the issue, later they resulted in emergence of crisis and now they transformed the old/silent conflict to the new/acute conflict predominantly through Morocco’s joining the AU. Decolonization is the solution to the Western Sahara conflict, but it cannot be implemented. Some articles of the Constitutive Act or other important legal documents that shape functioning of the AU have been generally in opposition to Morocco’s position and politics regarding the Western Sahara issue.

Through accepting Morocco’s membership application and lately readmitting it, the AU might try to find a response to Western Sahara issue or to soften policies of the parties to the conflict. As Morocco and the SADR have been a member of the same organization then it may be assumed that the solution can be found. However, the AU could not find solution to the political crisis and instead it created a brand new and a legal crisis from a silent crisis. As of today, the occupier state and the occupied state are in the same institution.

For this reason, to facilitate Morocco’s inclusion, the AU did not put any condition on Rabat that would compel her to change her position on the Western Sahara. The AU has rested on political arena without touching the legal aspects. The AU without putting conditions for Rabat’s inclusion wants the Kingdom to be a member and continuation of the impasse in the Western Sahara conflict. On the other hand, to the AU the Western Sahara conflict

79 “Morocco’s adherence to...”, *loc. cit.*

might be solved within the AU. Conditioning might further result in other parties’ of the conflict putting their own that certainly will give damage to the AU.

According to some AU members the Western Sahara is under Moroccan occupation, and yet the occupier state and the occupied state are in the same Organization. The AU may succeed in finding resolution acceptable to both members or may face serious constraints to its legal and political credibility.

However, the future remains uncertain especially for the AU. The Kingdom does not hesitate to state that the AU has no legal authority to intervene in the Western Sahara conflict. Thus, some legal issues will test whether or not Morocco and the AU conform to each other. Also, the credibility of the Organization is and will be questioned. If Rabat breaches the Constitutive Act, it will create tension among the AU and its members.

Moreover, there has been the possibility of restarting armed struggle. If the current impasse on the Western Sahara conflict continues than crisis may be transformed into a new wave of armed struggle. From time to time, several declarations are made by the PF in taking armed struggle into its agenda again.⁸⁰

The Western Sahara issue because of Morocco’s demand of membership becomes a crisis for the continental framework again. However, till this day it has not caused any hot or actual crisis that ceased functioning of the AU, threatened seriously membership of both the SADR and Morocco. Actually, the Western Sahara conflict has reflected a crisis based on membership of Morocco and/or the SADR. Former’s decision to leave the OAU, later its demand to be readmitted indicate such phenomenon.

80 “Polisario Vows to Return to ‘Armed Resistance’ in Response to Moroccan King’s Speech”, *Middle East Monitor*, <https://www.middleeastmonitor.com/news/africa/15196-polisario-vows-to-return-to-armed-resistance-in-response-to-moroccan-kings-speech>, (Date of Accession: 29.12.2019).

Now Morocco is an AU member, but the number of the member states or the African states has not been clear yet; 54 or 55? It is questionable that through readmitting Morocco the African Union becomes a complete union. The African Union does not mean the union of Africa, but Africa's unity. The Western Sahara conflict still continues and its effect on the AU as a party of crisis is still valid. It is revealed more than once that there has been a division among the AU's members on resolution of the Western Sahara. To some of its members, the Western Sahara conflict has political answer but to the AU it has legal and concrete answer. The continent as a whole has not had exactly same policies, the AU's or the OAU's decisions have not reflected positions of its 55 members. This new process also indicates first sign of a new and acute crisis as some members wanted to expel the SADR from the AU. Membership issue with its quit and readmission dilemma has been detrimental to the union of Africa.

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