



**POLICY CENTER  
FOR THE NEW SOUTH**

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# THE SAHARA CONFLICT

Reviewing the Legal Debate  
from an Integrated Perspective



**MATSUMOTO SHOJI**



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Matsumoto Shoji

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## About the Policy Center for the New South

The Policy Center for the New South (PCNS) is a Moroccan think tank aiming to contribute to the improvement of economic and social public policies that challenge Morocco and the rest of Africa as integral parts of the global South.

The PCNS pleads for an open, accountable, and enterprising "new South" that defines its own narratives and mental maps around the Mediterranean and South Atlantic basins, as part of a forward-looking relationship with the rest of the world. Through its analytical endeavours, the think tank aims to support the development of public policies in Africa and to give the floor to experts from the South. This stance is focused on dialogue and partnership and aims to cultivate African expertise and excellence needed for the accurate analysis of African and global challenges and the suggestion of appropriate solutions.

As such, the PCNS brings together researchers, publishes their work and capitalizes on a network of renowned partners, representative of different regions of the world. The PCNS hosts a series of gatherings of different formats and scales throughout the year, the most important being the annual international conferences the "Atlantic Dialogues", the "African Peace and Security Annual Conference" (APSACO), and the "Africa Economic Symposium" (AES).

Finally, the think tank is developing a community of young leaders through the Atlantic Dialogues Emerging Leaders program (ADEL) a space for cooperation and networking between a new generation of decision-makers from the government, business, and civil society sectors. Through this initiative, which already counts more than 420 members, the Policy Center for the New South contributes to intergenerational dialogue and the emergence of tomorrow's leaders.

[www.policycenter.ma](http://www.policycenter.ma)

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## Preface

As the 'Western Sahara Conflict' Rather dispute because in 1975 the Sahara sovereignty was disputed by Morocco Mauritania and Polisario dates back to 1975, so its international legal consideration to the Declaration of Principles on *Western Sahara* by Spain, Morocco and Mauritania (Madrid Accord), concluded in 1975 among Spain, Morocco and Mauritania, for decolonizing '*Western Sahara*.' The Madrid Accord addresses explicitly administration, and implicitly sovereignty, over the *Western Sahara*.

Here, the term *Western Sahara* is not geopolitically neutral in the context of the conflict, because the territory is not located in the west of Morocco and Mauritania. It is 'western' only for Algeria among the states concerned. Also, it is 'western' for the Polisario—the group calling for independence for the *Western Sahara* territory. So, in Morocco, the territory is called Southern Morocco, Moroccan Sahara, The Sahara region and the like. In this book, it will be termed the 'Saharan provinces,' precluding the adjectives of eastern, western, or southern. The conflict shall be termed 'the Sahara issue,' instead of the *Western Sahara* conflict.

Almost all the legal issues related to the Sahara issue so far could be solved by an answer to a single question of whether Morocco assumes sovereignty over the Saharan provinces. Any discussion of the Sahara issue should consider seriously that question, based on international law, before elaborating on other issues, including Morocco's territorial integrity and the right of Sahrawi people to self-determination in the Saharan provinces.

As such, sovereignty over the Saharan provinces shall be an introduction to the consideration of the Sahara issue. The introductory section of this book is devoted to the issue of sovereignty over the Saharan provinces. Consideration of the issue of sovereignty should be done in conformity with existing international law, not with legally non-binding materials.

Any legal considerations should be based on *lex lata*, not *lex ferenda* ( *Lex ferenda* serves as a label for something which has at least conceptual existence, as a contrast or opposite to *lex lata*, the law that exists and obliges the subjects of law to adopt, or to refrain from, certain defined courses of conduct in certain defined circumstances (Cambridge University Press ). The most significantly relevant *lex lata* in this regard is the Madrid Accord, rather than a legally non-binding advisory opinion from the International Court of Justice, a private opinion from a legal counsel to the United Nations Secretary-General, or UN General Assembly resolutions, which cannot impose obligations on UN member

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states. Nevertheless, the decisions of certain international and domestic courts have relied on such non-binding materials, i.e. not on international law. What is worse, such decisions have been quoted in subsequent court decisions, without verification. Surprisingly, these decisions do not take the Madrid Accord seriously. That is why the Sahara issue should be considered from the international legal perspective.

Five chapters and a paper in an annex in this book have been drawn largely from the following papers, published by the Policy Center for the New South (PCNS), Rabat, Morocco. These have been updated, amended, and added to, although the titles are the same:

Chapter 2: *Jus Cogens* and the Right to Self-Determination, Falsifiability of Tests; Policy Center for the New South, Research Paper, RP-20/12, September 2020.

Chapter 3: On Additional Issues in the *Western Sahara* Advisory Opinion; Policy Center for the New South, Research Paper, PP-21/05, January 2021.

Chapter 4: Manchukuo and the Self-Declared SADR: International Law of Recognition and the Sahara Issue; Policy Center for the New South, Research Paper, PP-21/02, January 2021.

Chapter 9: Morocco's Sovereignty over Natural Resources in Saharan Provinces; Policy Center for the New South, Research Paper, PP-20/01, January 2020.

Chapter 11: No 'Military Occupation' in the Saharan Provinces; Policy Center for the New South, Research Paper, PP-20/29, November 2020.

Annex: 2019 Secretary-General Report on Sahara: What's New, 'Neighboring States as Parties, in Roundtable; Policy Center for the New South, Policy Brief, PB-19/22, June 2019.

As the Sahara issue remains ongoing, and besides in the more deteriorated manner, new legal issues may well emerge, although this book is meant to encompass the main legal issues relating to the Sahara issue. Even then, it is expected that this book will be of some help for discussing such issues as well.

The reader might have noticed by now that this project is the fruit of a collaboration with PCNS, a Moroccan think tank aiming to contribute to the improvement of economic and social public policies that challenge Morocco and the rest of Africa as integral parts of the Global South. PCNS pleads for an open, accountable, and enterprising 'new South' that defines its own narratives and mental maps around the Mediterranean and South Atlantic basins, as part

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of a forward-looking relationship with the rest of the world. Through its analytical endeavors, PCNS aims to support the development of public policies in Africa and to give the floor to experts from the South. It brings together researchers, publishes their work, and capitalizes on a network of renowned partners, representative of different regions of the world, including Asia.

Finally, I would like to express my special thanks to my colleagues, the President of PCNS, Dr Karim El Aynaoui, Dr El Mostafa Rezrazi, former Ambassador of Morocco to the UN, Dr Mohamed Loulichki, and Nassim Hajouji.

**Shoji Matsumoto**

Sapporo, Japan - 2024



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# Abbreviations

- **AC:** Law Reports, Appeal Cases
- **ACHPR:** African Charter on Human and Peoples' Rights
- **ACHPR Commission:** African Commission on Human and Peoples' Rights
- **AHG:** Assembly of Heads of State and Government, OAU
- **AU:** African Union
- **AU Constitutive Act:** Constitutive Act of the African Union
- **AU Doc:** African Union Document
- **CERD:** Committee on the Elimination of Racial Discrimination
- **CESCR:** Committee on Economic, Social and Cultural Rights
- **Committee of 24:** Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples
- **CORCAS:** Royal Advisory Council for Saharan Affairs
- **Corell Letter:** Letter dated on 29 January 2002 from the Under-Secretary-General for Legal Affairs, the Legal Counsel, addressed to the President of the Security Council
- **CSCE:** Conference on Security and Co-operation in Europe
- **Draft Articles on State Responsibility:** Draft Articles on Responsibility of States for Internationally Wrongful Acts
- **Draft Conclusions on Jus Cogens:** Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law
- **Friendly Relations Declaration:** Declaration on Principles of International Law Concerning Friendly Relations and Co-Operation among States in accordance with the Charter of the United Nations
- **EC:** European Community
- **ECHR:** Convention for the Protection of Human Rights and Fundamental Freedoms
- **ECOSOC:** Economic and Social Council, UN
- **Friendly Relations Declaration:** Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations
- **ESEC:** Economic, Social, and Environmental Council, Morocco
- **Frontier Line Convention:** Convention concerning the State Frontier Line established between the Islamic Republic of Mauritania and the Kingdom of Morocco
- **GA Res:** UN General Assembly Resolution
- **Granting of Independence Declaration:** Declaration on the Granting of Independence to Colonial Countries and Peoples

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- **HRC:** Human Rights Council
  - **ICC:** International Criminal Court
  - **ICCPR:** International Covenant on Civil and Political Rights
  - **ICERD:** International Convention on the Elimination of All Forms of Racial Discrimination
  - **ICESCR:** International Covenant on Economic, Social and Cultural Rights
  - **ICJ:** International Court of Justice
  - **ICJ Rep:** International Court of Justice Reports of Judgments, Advisory Opinions and Orders
  - **ICJ Statute:** Statute of the International Court of Justice
  - **ICSPCA:** International Convention on the Suppression and Punishment of the Crime of Apartheid
  - **ILC:** International Law Commission, UN
  - **ILC Yearbook:** Yearbook of the International Law Commission
  - **ILM:** International Legal Materials
  - **ILO:** International Labor Organization
  - **LN:** League of Nations
  - **Madrid Accord:** Declaration of Principles on Western Sahara by Spain, Morocco and Mauritania
  - **MINURSO:** United Nations Mission for the Referendum in Western Sahara
  - **Moroccan Autonomy Initiative:** Moroccan Initiative for Negotiating an Autonomy Statute for the Sahara Region
  - **OAU:** Organization of African Unity
  - **OAU Doc:** OAU Document
  - **OHCHR:** Office of the High Commissioner for Human Rights
  - **OLAF:** European Anti-Fraud Office
  - **Organized Crime Convention:** Convention against Transnational Organized Crime
  - **PCIJ:** Permanent Court of International Justice
  - **PCIJ Rep:** Permanent Court of International Justice Reports
  - **Polisario:** Popular Front for the Liberation of Saguia el-Hamra and Río de Oro
  - **RIAA:** United Nations Reports of International Arbitral Awards
  - **Rome Statute:** Rome Statute of the International Criminal Court
  - **'SADR':** 'Saharan Arab Democratic Republic'
  - **Sahara Opinion:** Western Sahara, advisory opinion, ICJ Rep 1975
  - **SC Res:** UN Security Council Resolution
  - **SG:** UN Secretary-General

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- **TICAD:** Tokyo International Conference on African Development
  - **UK:** United Kingdom
  - **UN:** United Nations
  - **UN Charter:** Charter of the United Nations
  - **UN Doc:** United Nations Document
  - **UNESCO:** United Nations Educational, Scientific and Cultural Organization
  - **UNHCR:** United Nations High Commissioner for Refugees
  - **US:** United States of America
  - **U. S.:** United States Reports (Supreme Court)
  - **U.S.C.:** United States Code
  - **U.S.C.A.:** United States Code Annotated
  - **Vienna Treaty Convention:** Vienna Convention on the Laws of Treaties
  - **WHO:** World Health Organization

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In this book, the legal research on the Sahara Issue is made from a third party perspective. Although the empirical methodology of this third opinion is traditional, attention is aimed at the international law that has been innovated in the past 50 years.

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