‘Professor Clark, What Can We Do about the Western Sahara’?

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1 Introduction

Roger, in his celebrated career as an inspirational teacher of international law, must have faced many challenging questions from students roused to indignation by his lectures revealing global injustice, double standards, abuse of power and human cruelty. He will surely have faced this one from an outraged student: ‘Professor Clark, what can we do about the Western Sahara’? Roger would have been able to point the student to his fine 2007 publication on the Western Sahara and his splendid earlier publications on East Timor. These works were often part of a common endeavour with other kindred spirits engaged in outstanding and inspiring scholarship that helped to establish the illegality of the aggression against East Timor and Western Sahara. But, as the International Court of Justice (‘ICJ’) in Namibia observed, ‘the qualification of a situation as

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illegal does not by itself put an end to it. It can only be the first, necessary step in an endeavour to bring the illegal situation to an end.\(^2\)

My paper commemorates Roger's ground-breaking work by addressing the question of what we can do about the Western Sahara, in 2015. There is no need for me to critique what Roger and others have so ably established, but it will help to begin with a brief statement about the law and facts relating to the Western Sahara that are, to my mind, convincingly proven. This setting of the framework will then enable me to engage with the core question of what we can do, in the year 2015, when the Western Sahara remains occupied and its people continue to be denied the right to self-determination. With Spain and Morocco still being obstructive, supported in their intransigence by certain Security Council members amid widespread indifference, with illusions about the abilities of the United Nations (‘UN’) in this matter shattered most recently by the High Commissioner for Human Rights,\(^3\) and the European Union (‘EU’) joining in to exploit the natural resources of the occupied territory, what can we do? What alternative approaches can be employed, in the words of the ICJ, to ‘bring the illegal situation to an end’?

2 The Cup of the Western Sahara Runneth over with the Froth of International Law

Since 1975,\(^4\) the Saharawi have been a people who have been forcibly denied their right to self-determination in a political sense, and in an economic sense through the non-consensual exploration and exploitation of the natural resources of their territory.\(^5\) This dispossessed people live today either under Moroccan


\(^4\) It was in 1966 that the United Nations first called on Spain to hold a referendum in ‘Spanish Sahara’, see *UNGA Res 2229 (XXI) (20 December 1966) ‘Question of Ifni and Spanish Sahara’* UN Doc A/RS/2229 (XXI) (‘UNGA Res 2229 (XXI)’). Morocco first entered the territory in November 1975, taking full control in 1978.

\(^5\) For a legal assessment of the mineral exploitation in the Western Sahara, see ‘Letter dated 29 January 2002 from the Under-Secretary-General for Legal Affairs, the Legal Counsel, addressed to the President of the Security Council’; *UN Doc S/2002/161* (‘Correll Opinion’).