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The March on the Spanish Sahara: A Test of International Law

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STUDENT COMMENTS

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On November 6, 1975, 350,000 Moroccan civilians armed only with the Koran, crossed the border into the Spanish Sahara. The march was halted after only three days and six miles, but even as the Moroccans returned home, suffering from the rigors of the unwelcoming desert, the uniqueness and audacity of King Hassan's venture had taken the world aback, and Morocco's claim to the Spanish Sahara had been indelibly marked in history.

The march was not only a political and historical event, however. It was also a test of, and a challenge to, international law. After a brief historical and political background, this comment will explore the responses of international legal institutions to the situation, and the applicability of several principles of international law to the event—among them, self-determination, aggression, and coercion—and the psychological and cultural factors which deeply affect the application of international law to a situation of this kind. Through this examination, the strengths and weaknesses of international law as an ordering of world dynamics may be, to some extent, revealed.

I. HISTORICAL BACKGROUND

The Spanish Sahara, 105,000 square miles of desert in northwestern Africa, has a total population variously estimated at 60,000, 70,000 and 75,000. The majority of the population are nomadic Arab-Berbers, who wander across the borders of Morocco, Mauritania, and Algeria. There is a small sedentary group of Black farmers in the northern oases, and a European population, in 1971, of 16,648.[1]

The area has been included in Morocco's territorial claims ever since that country achieved independence in 1956. In fact, Morocco has, at one time or another, claimed Mauritania, the

1. Enahoro, *Imbroglio in the Sahara*, AFRICA, Dec. 1975, at 13 [hereinafter cited as Enahoro].

Spanish Sahara, parts of Algeria, and the small Spanish territories of Ceuta, Melitta and Ifni, to be "historically, ethnically, and politically Moroccan."[2] The boundaries which developed as a result of French and Spanish colonization were viewed as artificially imposed on a homogeneous area. Mauritanian independence in 1960, a border war with Algeria in 1965, and the ceding of Ifni to Morocco in 1969 settled some of the territorial disputes. However, Morocco remained firm in its claim, as sporadic skirmishes in the area for the past twenty years indicate, that the territory of the Spanish Sahara should be restored to Morocco; at the time of the French conquest at the end of the nineteenth century, the area was ruled by a Moroccan governor.[3]

Mauritania's claim to the area, as heir of the Moors who lost their huge empire in the eighth century, could be viewed as even stronger than Morocco's.[4] Since 1936, when Spain began its occupation of the area, the colonial power has vacillated in its desire for the territory. The realization, in 1964, that there was no oil in the area brought Spain to the point of negotiations with Morocco for a settlement of the dispute.[5] But suddenly, in the next year, no one was willing to give up; the Spanish Sahara's vast phosphate deposits were discovered.

This economic issue is the main reason for the current crisis. Morocco is the world's largest exporter of phosphates, which are used in the manufacture of fertilizer, and the industry constitutes more than half of Morocco's foreign exchange revenue. A competing industry in the Spanish Sahara would seriously affect the Moroccan industry. The territory has reserves of 1.7 billion tons of high grade ore.[6] For the same reason, Spain immediately tightened its grip on the area, and began exploiting the resource; Mauritania quickly saw an opportunity to aid its own economy; and Algeria, which has no territorial claims to the Sahara, strongly voiced its opposition to a Moroccan takeover.

2. N.Y. Times, July 1, 1956, at 19, col. 3.
3. N.Y. Times, Aug. 29, 1957, at 26, col. 3.
4. Enahoro, *supra* note 1, at 10.
5. N.Y. Times, Jan. 20, 1964, at 74, col. 5.
6. Enahoro, *supra* note 1, at 9.

II. THE CURRENT CRISIS

In September of 1970, the leaders of Morocco, Algeria, and Mauritania applied diplomatic pressure to Spain to vacate the territory, and to agree to a United Nations-supervised referendum for the people of the territory.[7] Since that time, the claims and counterclaims have intensified. Finally, King Hassan of Morocco appealed to the United Nations, in 1974, to arrange the return of the Spanish Sahara to Morocco. The United Nations sent observers to study the situation. Subsequently, Hassan realized that a referendum might go against Morocco, and proposed that the dispute be taken to the International Court of Justice. The Court began deliberations on the question of whether the Spanish Sahara is a no-man's land, or a legitimate Moroccan (or Mauritanian) territory.[8]

Spain requested United Nations observers, reserved the right for an emergency Security Council session if peace in the area was threatened, and promised to set a deadline for withdrawal.[9] The Security Council met and adopted a unanimous resolution calling on all concerned "to avoid any unilateral action which might further increase the tension in the area." It also requested Mr. Waldheim, the Secretary-General of the United Nations, to intensify consultations. The Secretary-General proposed a six-month cooling-off period during which the United Nations could create a temporary administration in the area.[10]

On October 16, 1975, the International Court of Justice announced its decision that neither Morocco nor Mauritania had any territorial sovereignty over the area. The court did say that when the territory was colonized by Spain, the rulers of Morocco and what is now Mauritania had the allegiance of some of the territory's nomadic tribes.[11] Immediately after the Court's decision came down, King Hassan announced that he would lead the march into the Spanish Sahara, saying that "no tyrant, no matter how faithless, would give orders to fire on 350,000 unarmed persons."[12]

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7. B. CURRAN & J. SCHROCK, AREA HANDBOOK FOR MAURITANIA 99 (1972) [hereinafter cited as CURRAN].

8. N.Y. Times, Aug. 26, 1974, at 4, col. 4.

9. N.Y. Times, May 25, 1975, at 7, col. 1.

10. Enahoro, *supra* note 1, at 11.

11. N.Y. Times, Oct. 17, 1975, at 8, col. 4.

12. *Id.*

The march, superbly orchestrated and enthusiastically supported by Moroccans, immediately began to pay off for Morocco, although it was abruptly halted because of a Spanish force inside the territory and the threat of Spanish minefields. By November 14, Spain had agreed to abandon the Spanish Sahara by February 28, 1976, and to share its administration with Morocco and Mauritania until then, at which time the two neighboring countries would jointly administer the country.[13] However, Algeria has never accepted this agreement which also bypassed United Nations efforts to effect a self-determination referendum. There have been skirmishes between Algerian regulars, Algerian-backed Saharan guerrillas, and Moroccan troops since the agreement, culminating in Morocco and Mauritania breaking off diplomatic ties with Algeria on March 7, 1976.[14] On February 26, two days ahead of schedule, the immediate goal of the march was finally accomplished—Spain withdrew from the territory now known as the Western Sahara.

III. LEGAL RAMIFICATIONS

Although the legal implications of the Sahara incident are closely interrelated, they will be separated into four groups for greater ease of analysis: self-determination; aggression and coercion; "non-legal" aspects of international law; and international organizations.

A. *Self-Determination*

The history of the principle of self-determination is bound up with the doctrine of the French Revolution that government should be based on the will of the people, and if the people are not content with the form of government they should be able to change it as they wish. This doctrine "had since the very beginning the character of a threat to the legitimacy of the established order."[15] As a corollary to popular sovereignty, the doctrine was also related to peaceful change. Territorial transfers between sovereign nations should be guided and arbitrated by the people affected by the transfers. As this theory is vague and imprecise, and particularly because of the revolutionary

13. N.Y. Times, Nov. 15, 1975, at 1, col. 2.

14. N.Y. Times, Mar. 7, 1976, at 7, col. 1.

15. R. SUREDA, THE EVOLUTION OF THE RIGHT OF SELF-DETERMINATION 17 (1973) [hereinafter cited as SUREDA].

character of popular sovereignty, self-determination has been considered by some merely a political concept, and not a legal right.[16]

The modern use of the concept became pronounced near the end of World War I. Although not mentioning the actual word "self-determination", which was first used in a 1916 British memorandum, Woodrow Wilson's Fourteen Points Address of January 18, 1918 gave great impetus to the principle. The Allies themselves, however, "accepted self-determination only insofar as it applied to the disintegration and dissolution of the German, Austro-Hungarian, Turkish, and former Russian empires. There was no intention of applying the principle to their own colonies and subject peoples."[17] The phrase was not referred to in the peace treaties of 1919, nor in the Covenant of the League of Nations, but was reincarnated in the Charter of the United Nations.

Article 1(2) of the Charter expressly refers to "the principle of equal rights and self-determination of all peoples." Article 55, dealing with international economic and social cooperation, also refers to self-determination as a principle rather than a right. In Article 73, a non-self-governing territory is defined as one "whose peoples have *not yet* attained a full measure of self-government" (emphasis added). Although self-determination is contained in the Charter as a principle, it is not a legal right, and was not listed as one in the Universal Declaration of Human Rights of 1948.[18]

Self-determination did not become a significant working principle of the United Nations until the 1960's, by which time the world order had significantly changed. In 1948, there were only three self-governing African nations—Ethiopia, Liberia, and the Union of South Africa.[19] Throughout the Sixties, several colonies gained independence every year. The Declaration on the Granting of Independence to Colonial Countries and Peoples[20] was the first of several General Assembly resolutions

16. *Id.* at 25. For a thorough treatment of the doctrine and the literature dealing with it, *see* U. UMOZURIKE, SELF-DETERMINATION IN INTERNATIONAL LAW (1972).

17. Friedlander, *Self-Determination: A Legal-Political Inquiry*, 1975 DET. COL. L. REV. 71, at 71 [hereinafter cited as Friedlander].

18. G.A. Res. 217A, 3 U.N. GAOR Supp. 2, U.N. Doc. A/555 (1948).

19. Friedlander, *supra* note 17, at 84.

20. G.A. Res. 1514, 15 U.N. GAOR Supp. 16, at 66, U.N. Doc. A/4684 (1960). The Declaration reads as follows:

responding to the change in circumstances. The clear purpose of this document is to brand all colonialism as illegitimate, and contrary to the *right*, now not merely the *principle*, of self-determination. Whether this pronouncement affected international law in a strict sense is debatable, but it was certainly an indicator of the change in "the entire setting and international frame of mind in which the world's colonial—or anti-colonial—affairs are conducted."[21] Another indicator is the fact that nine states, including the United States, the United Kingdom, France, and Portugal, the major colonial powers of the past, abstained in the unanimous adoption of the resolution. Where such a body of doubt exists, "the existence of a rule of international law cannot lightly be assumed."[22]

Problems of definition make the application of this, and later resolutions, difficult. Neither "people" nor "nation" has any generally accepted meaning, so that the entity endowed

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1. The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation.
2. All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
3. Inadequacy of political, economic, social, or educational preparedness should never serve as a pretext for delaying independence.
4. All armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence, and the integrity of their national territory shall be respected.
5. Immediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed, or color, in order to enable them to enjoy complete independence and freedom.
6. Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.
7. All States shall observe faithfully and strictly the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights, and the present Declaration on the basis of equality, non-interference in the internal affairs of all States, and respect for the sovereign rights of all peoples and their territorial integrity.

21. R. EMERSON, SELF-DETERMINATION REVISITED IN THE ERA OF DECOLONIZATION 28 (1964) [hereinafter cited as EMERSON].

22. Emerson, *Self-Determination*, 65 AM. J. INT'L. L. 459, 462 (1971) [hereinafter cited as Emerson].

with the right, and the precise goal toward which self-determination is directed, are both unclear. However, a formula for self-determination has been developed through these resolutions:[23]

> (1) All dependent peoples are entitled to freedom;
> (2) The peoples so entitled are defined in terms of the existing colonial territories, each of which contains a nation;
> (3) Once such a people has come to independence, no residual right of self-determination remains with any group within it or cutting across its frontiers.

The last part of the formula was firmly established in 1960 by Resolution 1514,[24] which stated that "an attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations." Therefore, the right of self-determination can only be exercised once; the ethnic diversity of the peoples of the new state is no longer acceptable as a justification for self-determination. This caveat has served as a protection for the new elite of Africa against the threat of a Biafra-like secession.[25] The most recent major General Assembly resolution on the subject, a Declaration of Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations,[26] reaffirmed the "one-time-only" rule.[27]

In December 1966, two international human rights covenants—the International Covenant on Economic, Social, and Cultural Rights, and the International Covenant on Civil and Political Rights—contributed to the continuing process of formulation of the principle. In identical language, they state that "[all] peoples have the right of self-determination. By virtue of that right, they freely determine their political status and freely preserve their economic, social, and cultural development."[28] Although stated as a right, the Covenants do

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23. EMERSON, *supra* note 21, at 28.

24. G.A. Res. 1514, 15 U.N. GAOR Supp. 16, at 66, U.N. Doc. A/4684 (1960).

25. Note, *The United Nations, Self-Determination and the Namibia Opinions*, 82 YALE L. J. 533, 541 (1973) [hereinafter cited as Note].

26. G.A. Res. 2625, 25 U.N. GAOR Supp. 28, U.N. Doc. A/8028 (1970).

27. Friedlander, *supra* note 17, at 79. For the view that self-determination includes the right of secession, *see* Nayar, *Self-Determination Beyond the Colonial Context: Biafra in Retrospect*, 10 TEXAS INT'L L. J. 321 (1975).

28. G.A. Res. 2200A, 21 U.N. GAOR Supp. 16, at 49, U.N. Doc. A/6316 (1966). *See* Friedlander, *supra* note 17, at 77.

not recognize self-determination as an absolute, continuing right. As international covenants are considered authoritative interpretations of the Charter, these add to the debate as to whether self-determination is now a legal right.[29] By its Charter, resolutions, and Covenants, the United Nations has formalized self-determination as an important principle of international law. It pressured colonial powers to give up their colonies in the Sixties and Seventies.[30] But the present selective self-determination may still be more of a political doctrine than a legal right. A succinct summary of the present effectiveness of the concept is that it has

> historically depended upon the particular area and the particular peoples involved. It has never been universally applied and is more an ideological weapon than a practical political device. As a general principle of international law it has secured widespread acceptance. As a fundamental human right it is even now a questionable doctrine.[31]

One important additional problem with the doctrine, crucial to the Sahara situation, is the treatment of very small territories, or mini-states, when the question of self-determination arises.

Traditionally, it has been assumed that an entity must meet four criteria before it can be said to be a state: (a) a permanent population; (b) a defined territory; (c) government; and (d) the capacity to enter into relations with other states.[32] With the decrease in the number of large colonies, mini-territories, which often do not fulfill all of these requirements, constitute the majority of non-self-governing territories. Upon becoming free, mini-states do not resemble the classic nation-state. They need services from the outside world, technical and political advice, and status, involving at least direct access to the United Nations, if not membership.[33] There is some feeling that, having rejected trusteeship and colonialism, these mini-

29. Friedlander, *supra* note 17, at 81.

30. Note, *supra* note 25, at 558.

31. Friedlander, *supra* note 17, at 91. For an application of the doctrine to the Bangladesh conflict, *see* Nanda, *Self-Determination in International Law: The Tragic Tale of Two Cities—Islamabad (West Pakistan) and Dacca (East Pakistan)*, 66 AM. J. INT'L L. 321 (1972).

32. Cohen, *The Concept of Statehood in United Nations Practice*, 109 U. PA. L. REV. 1127, 1129 (1961).

33. Fisher, *The Participation of Microstates in International Affairs*, 62 AM. SOC. INT'L L. PROC. 164, 167 (1968).

states should choose a new form of association with the United Nations, in lieu of independence.[34] At the present time, however, the U.N. Committee of 24, which deals with such questions, has "strongly tended to equate the proper exercise of the right of self-determination with a decision for independence."[35] A Mini-State Committee, established by the United Nations in 1969, has held no meetings since 1971, an indication of the fact that the issue of mini-state membership in the United Nations has lost its urgency for the present; it is thought that many small territories will desire a status less than full independence, and membership.[36] This does not, however, speak to the question of how mini-territories are to be dealt with, whether they desire independence or not.

The United Nations has expressed its desire that the choice of self-determination be free and informed. As to freedom of choice, the United Nations has supervised plebiscites, or attempted to determine *ex post facto* the validity of elections bearing on the issue. An informed choice is much more difficult to implement, the colonial powers being reluctant to let the United Nations discuss the matter with the inhabitants of their territories.[37] The process of self-determination for the Spanish Sahara, as revealed by formal resolutions and informal activities, is a good case study of the application of the principle to a complex and difficult situation.

By its Resolution 2072 of December 15, 1965, the General Assembly requested the Government of Spain

> to take immediately all necessary measures for the liberation of the territories of Ifni and Spanish Sahara from colonial domination and, to this end, to enter into negotiations on the problems relating to sovereignty presented by these two Territories.[38]

In Resolution 2354 of December 19, 1967, the Assembly invited

> the Administering Power to determine at the earliest possible date, in conformity with the aspirations of the indigenous people of Spanish Sahara and in consultation with the Governments of

34. Bowett, *Self-Determination and Political Rights in the Developing Countries*, 60 AM. SOC. INT'L L. PROC. 129, 135 (1966).

35. Emerson, *supra* note 22, at 470.

36. Gunter, *The Problems of Ministate Membership in the United Nations System: Recent Attempts Towards a Solution*, 12 COLUM. J. TRANSNAT'L L. 464, 484 (1973).

37. Rapoport, *The Participation of Ministates in International Affairs*, 62 AM. SOC. INT'L L. PROC. 155, 158 (1968).

38. Esfandiary, *Comments*, 62 AM. SOC. INT'L L. PROC. 164, 172 (1968).

> Mauritania and Morocco and any other interested party, the procedures for the holding of a referendum under U.N. auspices with a view to enabling the indigenous population of the territory to exercise freely its right to self-determination. [39]

Although this resolution reaffirms the right to self-determination, there is no reference to territorial integrity or independence in it.[40] This may be explained by the fact that the Spanish Sahara was considered partly as a colonial enclave, because of its sparse nomadic population possessing very little understanding of concepts such as territory and sovereignty, and partly as a territory large enough for independence if not for its small population. Were it not for its character as a colonial enclave, interested parties would not have been granted standing for referendum negotiations, but had it been considered only a colonial enclave, no plebiscite would have been recommended at all.[41]

The Sahara's right to independence as a mini-state, made questionable by United Nations resolutions and its own scanty population, is further complicated by the differing views of the interested parties to the dispute. President Boumedienne of Algeria has stated that his country has no territorial claims to the area, but wants to insure that independence actually occurs. "Algeria, which accepted the principle of self-determination when it was at the peak of its own armed revolution, cannot abandon this principle now."[42] King Hassan of Morocco vehemently disagrees with this assessment. He has stated that "it is unthinkable for the Sahara to be independent, and it will not be as long as one Moroccan remains alive. By bringing it back to Morocco we make it independent; by letting it become independent we prepare for another colonization. The only independence for the Sahara is to be rejoined to the mother country."[43] Morocco has opposed a referendum on the grounds that the majority of the population is nomadic, and would be largely absent from the territory at any one time. This would leave the sedentary population to vote, which Morocco believes is mostly either of Spanish stock or pro-Algerian.[44]

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39. *Id.* at 173.
40. *Id.*
41. SUREDA, *supra* note 15, at 215.
42. Enahoro, *supra* note 1, at 10.
43. *Id.* at 13.
44. *Id.*

Perhaps the most important, if often ignored, views are those of the people of the Sahara, who are divided on the shape their future should take. The Sahoul National Union Party (PUNS), created by the Spanish, is of little current influence, but there is now a rivalry between the Algerian-supported Frente Polisario (Sahara Popular Liberation Front) and the Moroccan-supported FLUS (United Liberation Forces of the Sahara).[45] Frente Polisario is demanding total independence and self-determination, without supervision from neighboring states. Its membership is broadly based, and it is thought to be widely supported by the population. Oali Mustapha Siyed, Secretary-General of Frente Polisario, has stated that he may be willing to accept a U.N. referendum, but only on his terms.[46]

As of March 21, 1976, Saharans who had remained in Aiun, the capital of the new territory of Western Sahara, after the takeover by Morocco and Mauritania, stated that they strongly opposed any overseer for the territory. They expressed no reluctance to take weapons from Algeria, and, one said, "we'll keep fighting for independence until the last Saharan is wiped off the desert."[47] These were ordinary people of the territory, perhaps the final arbiters of their country's fate. Whatever the final result, it indicates that self-determination is not an easily applied principle, whether a legal right or merely a political doctrine. Like all principles of international law, it constantly needs reevaluation in the light of such events as the march on the Sahara.

B. *Aggression and Coercion*

It has been said that colonialism is permanent aggression, and therefore that colonialists not only have no rights with respect to their territories, but also have no standing to protest any aggression aimed at the liberation of those territories.[48] The issue cannot be disposed of so easily, however. The recent United Nations Definition of Agression, other official pronouncements, and theories of nonviolent coercion need to be examined before the unique Sahara march can be defined, and these theories tested.

45. *Id.* at 15.
46. *Id.*
47. N.Y. Times, Mar. 21, 1976, at 5, col. 1.
48. Emerson, *supra* note 22, at 465.

The concept of aggression "presently incorporates such an expansive set of moral, legal, and political connotations so as to be essentially devoid of conceptual clarity."[49] Nonetheless, attempts began to define the concept in the 1930's with the League of Nations. The lack of such a definition made determination of the legality of State action extremely difficult. The United Nations Charter contains several references to the use of force. Article 2(4) requires all members to "refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State . . . ." The one exception to this rule is in Article 51, which preserves "the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations . . . ." Usually, wars of "agitation, infiltration and subversion" carried on by national liberation movements are considered to be too small to be effectively dealt with by Article 51.[50] Although Article 39 calls for examination by the Security Council of any "threat to the peace, breach of the peace, or act of aggression," the United Nations has usually intervened only when overt hostilities have occurred. Intervention of tribunals such as the International Court of Justice usually occurs after the overt hostilities have ceased.[51]

As the responses of international institutions are not immediate, national officials must often act without their guidance when aggression is threatened or occurs. As neither the direct participants nor the international bodies had sufficient guidelines for their actions, a definition of aggression was seen as a necessity, and efforts continued by the United Nations. The 1973 attempt recognized for the first time that a listing of aggressive acts should include indirect forms of aggression. There was much disagreement as to the relationship between the lawful use of force and the right of self-determination.[52]

The United Nations Special Committee on the Question of Defining Aggression, and subsequently the General Assem-

49. Comment, *The United Nations Definition of Aggression: A Preliminary Analysis*, 5 DENVER J. INT'L L. & POL. 171, 172 (1975) [hereinafter cited as Comment].

50. Franck, *Who Killed Article 2(4)?*, 64 AM. J. INT'L L. 809, 812 (1970).

51. Comment, *supra* note 49, at 181.

52. Ferencz, *Defining Aggression—The Last Mile*, 12 COLUM. J. TRANSNAT'L L. 430, 432 (1973).

bly, finally approved a Definition of Aggression in 1974.[53] Several provisions of both the Preamble and the substantive articles are of direct relevance to the issue at hand. Paragraph 6 of the Preamble reaffirms "the duty of States not to use armed force to deprive peoples of their right to self-determination, freedom, and independence, or to disrupt territorial integrity." The next paragraph reaffirms

> that the territory of a State shall not be violated by being the object, even temporarily, of military occupation or of other measures of force taken by another State in contravention of the Charter, and that it shall not be the object of acquisition by another State resulting from such measures or the threat thereof.

Article 1 contains the generic definition of aggression:

> Aggression is the use of armed force by a State against the sovereignty, territorial integrity, or political independence of another State, or in any manner inconsistent with the Charter of the United Nations, as set out in this definition.[54]

In an explanatory note, it is stated that the term "state" is used "without prejudice to questions of recognition or to whether a State is a member of the United Nations," and that the term "includes the concept of a 'group of states' where applicable."[55]

By Article 2 of the definition, "the first use of armed force by a State in contravention of the Charter shall constitute prima facie evidence of an act of aggression," although the Security Council may decide that the presumption is rebutted by other circumstances, including the fact that the situation is not "of sufficient gravity." [56] The word "armed" indicates that only the most serious coercive situations are covered by the definition. "The implicit dimension reflected in this compromise is the ever present problem of achieving international consensus in a context which has significant political implications."[57]

Acts which constitute aggression are listed in Article 3 of the definition. Among these are territorial invasion or attack, and any resulting occupation or annexation; and indirect ag-

53. *See Report of the Special Committee on the Question of Defining Aggression*, 29 U.N. GAOR Supp. 19, U.N. Doc. A/9619 (1974) [hereinafter cited as *Report of the Special Committee*]; Comment, *supra* note 49, at 171.

54. *Report of the Special Committee*, *supra* note 53, at 11.

55. *Id.* at 9.

56. *Id.* at 11.

57. Comment, *supra* note 49, at 190.

gression, meaning one state allowing its territory to be used by another for an aggressive act against a third state, or the sending of armed bands to perpetrate armed force against another state.[58] Article 5 declares that "No consideration of whatever nature, whether political, economic, military, or otherwise, may serve as a justification for aggression," and further states that "No territorial acquisition or special advantage resulting from aggression are or shall be recognized as lawful." Article 7 reaffirms the right of self-determination.[59]

As a test of this Definition of Aggression, the uniqueness of the Moroccan march demands flexibility of interpretation. Although the use of the term "armed" throughout the definition may be only an indicator of the level of aggression, rather than an explicit requirement for it, the unarmed Moroccans do not, at a superficial level, fit the definition at all. It can be claimed, however, that the purpose of the march was, to some extent, to deprive the people of the territory of "their right to self-determination, freedom, and independence . . . ."[60] Though they were actually present in the territory for only three days, the marchers might have constituted a "military occupation," and the territory most certainly was "the object of acquisition by another State . . . ."[61] If the unarmed aspect is ignored, the generic definition contained in Article 1 can be seen as applicable to the incident, especially as the caveat to the Article decreases the importance of the fact that the Spanish Sahara was not an independent state at the time of the march.

Although there were Spanish troops waiting for the march-

58. *Report of the Special Committee, supra* note 53, at 37, 40; Comment, *supra* note 49, at 194.

59. Article 7 reads as follows:

> Nothing in this definition, and in particular Article 3, could in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to in the Declaration of Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, particularly peoples under colonial or racist regimes or other forms of alien domination; nor the right of these peoples to struggle to that end and to seek and receive support, in accordance with the principles of the Charter and in conformity with the above-mentioned Declaration.

60. Para. 6 of Preamble to Definition.

61. Para. 7 of Preamble to Definition.

ers inside the border of the Sahara, the Moroccans committed the first forceful act, which constituted prima facie evidence of aggression under Article 2 of the definition. Under Article 3, the act could be seen as a territorial invasion ultimately resulting in annexation, or as indirect aggression, by the sending of, in this case unarmed, bands to perpetrate force against another state. Article 5 recognizes neither political nor economic considerations as justifications for aggression. If this was indeed aggression, King Hassan's reasons for his action, which were entirely political and economic, are unusable as justifications. Furthermore, his "territorial acquisition" and the "special advantage" which he gained are not recognized as lawful under the same Article.[62]

Finally, Article 7, a strong statement of the right to self-determination and an important exception to the prohibition of aggression, is condemnatory of the Moroccan march if it is seen as an action taken to suppress the self-determination of the Saharans. The Frente Polisario and Algeria would certainly view it in this way. If seen as an action taken to preserve the independence of the Saharans, however, the march would be an exception to the prohibition of aggression. Morocco and Mauritania, using Hassan's unique interpretation of independence, would support this view. As can be seen from this analysis, the Definition of Aggression is helpful, but not fully applicable to this particular situation. Other theoretical formulations, some of them amplifications of Article 2(4) of the United Nations Charter, may be useful in delineating the aggressive and coercive aspects of the Moroccan march.

If one looks at the march as more of a test of nerve than a test of force, a brinksmanship theory provides an interesting analysis. In brinksmanship, a contest of nerves, there is a premium on "the quick *fait accompli* that leaves the other side the choice of acquiescing or initiating some large act of violence . . . . If one can arrange it so that the last clear chance to avert disaster falls to the adversary, he is the one who is deterred . . . ."[63] This is a precise description of the tactic that Hassan used in gaining a diplomatic advantage while his adversaries

62. Article 5 of Definition.

63. Schelling, *The Threat of Violence in International Affairs*, 57 AM. SOC. INT'L L. PROC. 103, 106 (1973).

were understandably reluctant to start a full-scale war in response to his action. An additional aspect of the theory is that what is in dispute is not only the immediate aim of the action, but also the expectations of the parties concerned about the future behavior of each participant.[64] Hassan no doubt knew that he would not gain the Spanish Sahara by means of his unarmed marchers, but he successfully demonstrated the unyielding strength of his desire for the territory.

The marchers themselves may be considered as volunteers, or as an armed band, in the application of established theory. As volunteers, their actions would not have been considered aggression by the state of their origin if they had been merely mercenaries. However, they were recruited, and the "government exhortation" precluded their nation's exclusion from the principle of aggression.[65] The marchers fit more precisely into the definition of an armed band, if, again, their unarmed status is overlooked. Under this theory, "the organization, with governmental complicity, of armed bands of emigres or other irregular groups on national territory, for incursion into the territory of another State or States" constitutes aggression.[66] There are numerous treaty and municipal law provisions dealing with frontier raiding by such bands, and the prohibition of hostile expeditions is viewed as a legal duty in State practice.[67] Thus, it would seem that Hassan's marchers violated an international norm, as well as part of the formal Definition of Aggression.

It has been suggested that Article 2(4) of the United Nations Charter may be flexible enough, itself, to apply to coercion other than traditional armed force. Subversion or participation in internal struggle for power, if the intervention threatens the political independence of the victim, would seem to be as much a prohibited use or threat of force as an armed at-

64. *Id.*

65. Brownlie, *Volunteers and the Law of War and Neutrality*, 5 INT'L & COMP. L. Q. 570, 571 (1956).

66. Brownlie, *International Law and the Activities of Armed Bands*, 7 INT'L & COMP. L. Q. 712, at 712 (1958).

67. *Id.* at 724. *See e.g.*, Treaty of Brotherhood and Alliance between Iraq and Transjordan, Apr. 14, 1947, 23 U.N.T.S. 147; Agreement for Friendship and Neighborly Relations between the United Kingdom on behalf of the Sheikh of Koweit and Saudi Arabia, Apr. 20, 1942, 10 U.N.T.S. 117; Treaty of Friendship between Egypt and Yemen, Sept. 27, 1945, 9 U.N.T.S. 373.

tack.[68] More strongly stated, the interpretation of "force" as including political and economic coercion is a necessary interpretation "in view of the potentially disastrous consequences that may attend a rigid adherence to the narrower prohibition of simple armed force."[69] This theory recognizes hierarchies of coercion in its nature, its intensity, and its purpose. As to its nature, there are three levels: military force; intermediate coercion, including ideological persuasion and the fomenting of civil strife by organized bands; and economic and political coercion, including diplomacy, boycotts, and embargoes. A judgment on the permissibility of such action must take into account the intensity of the coercion "in relation to the intended goal and the degree of provocation," and the purpose of the coercion, as the Charter allows the resort to force only in self-defense or as part of a United Nations enforcement action.[70]

If these hierarchies of coercion are recognized, the analysis of aggression and coercion becomes much more flexible, and Article 2(4) remains effective as "a behavioral norm." The current necessity for this may be seen by the search for a definition of aggression, international treaties that refer to non-military coercion, and General Assembly resolutions that do the same.[71] For example, the 1965 Declaration on the Inadmissability of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty states that "no State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights or to secure from it advantages of any kind."[72] The inclusion of economic and political coercion within Article 2(4)'s proscription may thus be seen as an increasingly perceived necessity "to develop among nations a commitment to refrain from these forms of force."[73]

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68. Henkin, *Force, Intervention and Neutrality in Contemporary International Law*, 57 AM. SOC. INT'L L. PROC. 147, 158 (1963).

69. Comment, *The Use of Nonviolent Coercion: A Study in Legality Under Article 2(4) of the Charter of the United Nations*, 122 U. PA. L. REV. 983, 988 (1974) [hereinafter cited as *Nonviolent Coercion*].

70. *Id.* at 992.

71. *Id.* at 999.

72. G.A. Res. 2131, 20 U.N. GAOR Supp. 14, at 11, U.N. Doc. A/6014 (1966).

73. *Nonviolent Coercion*, *supra* note 69, at 1006.

Applied to the Sahara situation, this theory allows a more subtle and relevant analysis than the simple armed force/noncoercion dichotomy. In the hierarchies of coercion, the march can be classified as political coercion, with enough intensity to threaten a full-scale war and with the intention to annex a territory, and as having an impermissible purpose, being neither a defensive nor a U.N. enforcement action. Although certainly not a typical confrontation, the Moroccan march may be indicative of a modern trend, recognized by treaties and resolutions, towards the use of nonviolent coercion by smaller states who, by virtue of their relative lack of military power, must turn to other means to attain their perhaps unlawful goals. If international law is to remain an important influence on the world order, it must be flexible enough to define and deal with such disruptive behavior as the march on the Sahara.

C. *"Non-Legal" Factors in International Law*

There are several factors influencing the meaning and application of international law which have a particular bearing on the case at hand. These include collective psychology and the dynamics of non-Western societies and new states.

The closest historical analogy to the Saharan march, in terms of its psychological dynamics, is the medieval Crusades. A reaction to them would fit the march as well: "One marvels at the fantastic heights of devotion to which old and young, rich and poor, well-born and base-born were occasionally able to ascend."[74] Other manifestations of collective psychology have emerged throughout history, witch-burnings and revolutionary mobs among them, and they have influenced international law in several ways. Crowd actions have initiated controversies and have influenced the identification of the parties to the dispute, their claims, the justifications for the claims, and the ultimate outcome.[75] Collective psychological factors have particularly influenced crises connected with the emergence of nation-states. They may arise spontaneously, or be incited by a charismatic leader. Political elites may protect their own

74. Lasswell, *The Impact of Crowd Psychology Upon International Law*, 9 WM. & MARY L. REV. 664, 665 (1968).

75. *Id.* at 669.

positions by directing frustration and hatred toward foreign targets.[76]

Although carefully managed by King Hassan, the march was a true exercise in crowd psychology. The crowds of Moroccans who answered his exhortation may not have had any inkling of the precise political reason for the march, but the call to a crusade was too exciting for thousands of them to resist. Their collective psychology was a major factor in the delineation of the dispute and its ultimate outcome. And Hassan's reign, which had never been particularly secure, gained a measure of support far greater than it had ever known, as the frustrations of the Moroccan people were directed toward an entrancing vision of national glory.

Another important factor in the genesis of the march may have been the ethnic and political composition of the participant nations. As a traditional Islamic monarchy, "the interplay of politics in Morocco is characterized by a marked ambiguity" of objectives. Islam and traditional values often are used to justify these ambiguous goals.[77] The essential Moroccan territorial thesis, for example, equates the old Islamic tradition of the community owing allegiance to a particular descendant of ancient rulers and the modern theory of the nation-state.[78] On the other hand, Algeria is an emerging leader of the Third World, an Islamic nation, but committed to socialism and modernization. It may not be possible for such opposing political systems to successfully settle territorial disputes without violence or threats.

As newly-independent and non-Western states, the participants in the dispute may be expected to apply international law and norms differently than a long-established Western European state would. The recently emerged African states tend to approach international law conservatively. Regional disputes are usually resolved through political processes rather than by means of international law.[79] When they do accede to international legal principles, it is the result of a careful choice,

76. *Id.* at 677.

77. M. BRETT, NORTHERN AFRICA: ISLAM AND MODERNIZATION 125 (1973).

78. CURRAN, *supra* note 7, at 98.

79. Spencer, *The Impact of International Law on Political and Social Processes Within the African Context*, 66 AM. SOC. INT'L L. PROC. 56, at 56 (1972).

rather than automatic acceptance. The concept of sovereignty is of great importance, and they are reluctant to accept any limitation of it. Their attitude toward international organizations is ambivalent, as they often need advice from outside sources, but they are reluctant to become dependent on such aid.[80]

As to the sources of international law, new states are unwilling to accept rules of state succession, which "provide that a new state is bound by all the general rules of international law which were in force at the time of its creation, regardless of their source."[81] Treaties are generally more acceptable than customary international law. The "general principles of law recognized by civilized nations" and unilateral acts of organizations such as the General Assembly are important as sources of law because the new nations can more easily contribute to the development of international law by these means.[82] As to the subjects of international law, most new states do not support the recognition of individuals as such, fearing the encouragement of secessionist groups. The concept of territory is valued as a legal shield against incursions from the outside. There is a liberal attitude toward recognition, which usually does not arise except for former colonies. The doctrine of state responsibility is unacceptable as "a cloak for imperialism by investor countries."[83] Because of this selective interpretation of international law, the newly-independent states are reluctant to accept compulsory jurisdiction of international judicial bodies. The acceptance of compulsory jurisdiction "implies the acceptance of the substantive rules." Without the possibility of application by an adjudicative organ, the rules themselves lose value.[84]

International law began as a body of generalizations from state behavior in the seventeenth and eighteenth century European state system. If these generalizations are allowed to become moral ideals which states must be forced to accept, it will become totally inapplicable to the present world order. In-

80. Abi-Saab, *The Newly Independent States and the Rules of International Law: An Outline*, 8 How. L. J. 75, 103 (1962).

81. *Id.* at 105.

82. *Id.* at 109.

83. *Id.* at 114.

84. *Id.* at 119.

stead, international law should be viewed as consisting of "the patterns in state behavior that exist in a particular place at a particular time and which have no necessary moral status."[85] Norms are likely to remain stable if there is a low level of social change, but the rate of change has greatly accelerated since the principles of international law were first formulated. In order to adjust to the quickly changing world, the international legal system must never assume that contemporary political and social processes are constants, to which a body of law may be steadfastly and permanently applied.[86]

In their choice of international legal theories, norms, and institutions, the non-Western, newly-independent states not only demonstrate an increasing skill at adapting an essentially foreign legal system to their own situations, but also illustrate the need for international law to keep abreast of social and political currents. The participants in the Sahara incident exhibited this selective application of international law in their attitudes toward the independence and self-determination of the Spanish Sahara, and especially in their vacillation with regard to the use of international organizations such as the United Nations and the International Court of Justice. The effectiveness of these organizations in dealing with the problem presented to them by these non-Western states is another aspect which needs to be examined.

D. *International Organizations*

The announcement of the march on the Sahara was made almost immediately after the International Court of Justice announced that Morocco had no valid legal claim to the territory. Of course, the march had been planned for several weeks previously, but the timing indicates both the importance of the decision and the International Court's effectiveness as an arbiter of international disputes.

That the dispute came before the Court at all is an exceptional circumstance. A state's decision to accept jurisdiction of the Court is a political one, influenced by certain aspects of international law and society.[87] Several factors inhibit recourse

85. Barkun, *International Norms as Facts and Ideals*, 66 AM. SOC. INT'L L. PROC. 39, 42 (1972).

86. *Id.* at 46.

87. Merrills, *The Justiciability of International Disputes*, 47 CAN. B. REV. 241, 242 (1969).

to the International Court. The possibility of an adverse verdict cannot be accepted when vital interests are at stake. A state which loses its case not only has had its legal arguments defeated, but its political position has thereby been weakened. If international law is seen by the states concerned as a reflection of European values, this may lead them to reject settlement by the application of that law.[88] It may be a greater advantage for one party to take possession of the subject matter of the dispute by an exercise of power. Finally, it may be a severe disadvantage to the state to have the legal merits of its case publicly determined. In short, compulsory jurisdiction "circumscribes a State's freedom of action."[89]

Although political questions are ordinarily regarded as not justiciable by the Court, it may be more helpful to consider the political nature of the Court itself. Article 92 of the United Nations Charter constitutes the International Court as the "principal judicial organ" of the United Nations, thus making it an integral part of a political phenomenon.[90] The separation of international disputes into political and legal ones, by this theory, is itself artificial, as they are all at least partially political. The nature of the Court's political task, a difficult one, may thus be seen as

> isolation of the legal problem from the political circumstances in which it originates; consequent reduction of tensions between states; and solution of the legal problem on the bases of objective and even abstract examinations, to the exclusion of all political, moral, or extralegal considerations.[91]

While the Court has almost unlimited power to answer a request on any legal question, the propriety of rendering an opinion when noncompliance is a certainty may be questionable.[92] Compliance with its decisions is a major problem for the Court, which by its nature as an international tribunal has no power of action against nations. Enforcement of its judgment rests with the Security Council by Article 94 of the Charter.[93]

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88. *Id.* at 256.

89. *Id.* at 268.

90. Doeker, *International Politics and the International Court of Justice*, 35 TUL. L. REV. 767, 773 (1961) [hereinafter cited as Doeker].

91. *Id.* at 785.

92. Schwartz, *The International Court's Role as an Advisor to the United Nations*, 37 B.U. L. REV. 404, 427 (1957).

93. Deutsch, *Problems of Enforcement of Decrees of International Tribunals*, 50 A.B.A.J. 1134, 1135 (1964) [hereinafter cited as Deutsch].

However, a violation of the Court's decree by invasion of disputed territory would unquestionably constitute aggression—to the breach of international peace would be added the violation of a precedent judicial adjudication. Therefore, while it has no power of enforcement of its own, the Court by its decision aids in delineating the extent of the aggression.[94]

It is difficult to understand why Morocco initiated the process of submitting the Saharan issue before the Court. Several of the inhibiting factors were present—the interests at stake made an adverse verdict unacceptable, and the Moroccan political position would have been severely weakened if it were not for the march. An exercise of power became of much greater advantage. If Hassan had chosen to follow the Court's opinion, his freedom of action would have ceased to exist. Although the Court treated the dispute as a legal issue, it was never depoliticized sufficiently by the parties involved to permit them to accept an objective examination. Particularly in this case, the probability of noncompliance was so great as to make the Court's deliberations an exercise in futility. However, it did add to the strength of the characterization of the march as an aggression.

Although the United Nations, as an international political organization, would seem to be better equipped to deal with highly politicized situations, its response to and effectiveness in this incident are indicative of several problems.

It was originally intended by the United Nations Charter that the General Assembly would be limited primarily to recommendatory powers. In recent years the Assembly has taken on more responsibility as the Security Council "has failed to promote the aims of the Charter" due to the frequent use of the veto and the antagonisms between East and West.[95] The frequent General Assembly resolutions on such issues as aggression and self-determination have been a powerful tool in shaping international norms. Although not binding, in certain contexts a series of resolutions "assumes a prescriptive or quasi-legislative role by generating a consensus that it constitutes a source of law binding on all parties."[96] The Security Council

94. *Id.* at 1136.
95. Note, *supra* note 25, at 550.
96. *Id.* at 552.

has also been reluctant to submit requests to the International Court of Justice for advisory opinions, but again, the General Assembly has seen fit to use this method of problem-solving. Advisory opinions are not binding, but they are of great prestige and often politically persuasive.[97] In dealing with self-determination questions, the United Nations has particular difficulties, due to the fact that states are almost always the only international persons recognizable by it. Unless individuals are recognized, it is practically impossible to hear grievances of secessionist groups and oppressed minorities.[98]

The enforcement process is the most important, and the most problem-ridden, of the United Nations' functions. The attitude in which the U.N. delegations approach the task of enforcement, the unavailability of information as to the merits of each party's case, and the limitations of time "all militate against an informed and dispassionate examination of the legal obligations of the parties," with the aim of determining which party violated the law.[99] The Security Council or General Assembly may call upon nations to refrain from aiding or furnishing supplies to the participants in a conflict, and may protest excessive force, even if used in self-defense.[100] After the International Court of Justice renders an opinion, enforcement by the Security Council "is, in effect, a new dispute to be resolved politically." The Security Council may, by examination of the entire political setting of the dispute, decide that the weight of the judicial decree is less than that of other considerations.[101] The Security Council's enforcement function is discretionary, not obligatory. One possible, although extreme, measure would be the enforcement of Article 5 of the Charter, which states:

> A member of the United Nations against which preventive or enforcement action has been taken by the Security Council may be suspended from the exercise of the rights and privileges of membership by the General Assembly on recommendation of the Security Council.[102]

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97. Doeker, *supra* note 90, at 785.

98. Note, *supra* note 25, at 558.

99. Baxter, *The Legal Consequences of the Unlawful Use of Force Under the Charter*, 62 AM. SOC. INT'L L. PROC. 68, 71 (1968).

100. *Id.* at 74.

101. Deutsch, *supra* note 93, at 1135.

102. *See id.* at 1139.

Although this last enforcement measure might seem rather harsh, it would be applicable to Morocco, against which preventive action had been taken. The Security Council had called on the parties to avoid unilateral action before the march occurred, and had the Secretary-General intensify negotiations. During the march, the Security Council requested Morocco to immediately withdraw from the area.[103] Although the marchers did almost immediately withdraw, it was clearly not as a result of United Nations' pressure, but because of the impending confrontation with Spanish troops. The Security Council's actions did not fully support the International Court's opinion, as the effort was to negotiate a settlement between all of the interested parties, ignoring the opinion's conclusion that Morocco and Mauritania had no legal claim to the Spanish Sahara. As pointless as a stricter stance might have been, it remains that the United Nations had almost no effect on either the confrontation or the ultimate resolution of the dispute—Spain, Morocco, and Mauritania came to the agreement among themselves.

IV. CONCLUSION

The key to the Spanish Sahara incident, in terms of its impact on international law, is the measure of success that Morocco enjoyed. Amidst vehement protests from a more powerful neighbor, and strongly worded requests from the major international organizations, Hassan finally received the valuable piece of desert that he had desired for so long. The march is a symbol of his victory; it is also a measure of the applicability of international law and the effectiveness of international institutions.

If it is not now a definitive legal right, self-determination is at least a vitally important legal and political principle. Especially in this highly politicized situation, the implementation of self-determination would seem to be a highly desired goal, even if independence were not the final result. Instead, the march and its repurcussions effectively blocked the Saharans from exercising, at least for the present, their right of self-determination.

Although there is still some difficulty in applying theories

103. N.Y. Times, Nov. 7, 1975, at 13, col. 1.

of aggression and coercion to the march, the new Definition of Aggression and recent delineations of nonviolent coercion have increased the flexibility of the concept. The march was an act of aggression in the intensity of its political coerciveness, although arrival at this conclusion is made more difficult by the Definition's insistence on "armed" force.

In addition to prompting traditional legal analysis, the march demonstrates the applicability of theories formulated outside the legal framework. Collective psychology, economics, history, and the cultural and political background of new states all shape the way in which international incidents manifest themselves. A long-established Western state would not sponsor a crusade, but the march was a logical extension of the dynamics of Moroccan society.

The United Nations and the International Court of Justice, as the major vehicles for the application of international law, have had mixed success in dealing with international crises. As formulators of international doctrine by way of resolutions and opinions, they have an impressive record; as enforcers of that doctrine, the record is much less impressive. Their failure to affect the aftermath of the march strongly suggests the problems in regard to enforcement.

Recommendations are not easily made, as all of these problems are complex and elusive. However, four general suggestions can be made, corresponding to the four problem areas:

1. Continuing efforts should be made to insure that the Saharans will be afforded the opportunity to determine their own future. More generally, U.N. attempts at arranging self-determination referendums should not be halted by the "one-time-only" principle or any other inhibiting factor. Disallowing secession may be comforting to new elites, but it should be impermissible as a principle of international law.
2. As a codification of an international legal norm, the Definition of Aggression is a useful tool. However, it should be broadened to include unarmed force, using as a guide recent theories of nonviolent coercion. Incidents such as the march may then be more quickly determined to be aggression, and responded to with greater decisiveness.
3. An effort should be made to make international law more responsive to nation-states with perspectives differing from those upon which international law was founded. It will then be easier to determine what nation-state behavior to anticipate, and

whether that behavior violates not merely Western norms, but basic international norms as well.

4. The United Nations and the International Court of Justice should work together in their decision-making processes. If the International Court continues to accept highly politicized disputes, the United Nations should at least follow the Court's decision in its own actions, if for no other reason than to preserve the Court's credibility. And in its own actions, the United Nations should escalate its responses to such incidents by being less hesitant to brand aggression as such, and by maintaining pressure for more equitable solutions than the present arrangement in the Sahara.

That Hassan was able to do what he did signifies not only the imaginativeness of his tactic; it serves as a warning to the international legal system to maintain the utmost flexibility in dealing with the quickly changing international order. There may never again be another crusade, but there will be other challenges to take the place of the march on the Sahara.

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