

The Underlying Causes of Morocco-Spain Maritime Dispute off the Atlantic Coast

By Samir Bennis.

Introduction

The question of the delimitation of maritime boundaries between Morocco and Spain has always been a hot topic in the relations between the two countries. Because of the complexity of the issue and its legal and political ramifications, there are no formal maritime boundaries between Morocco and Spain, whether in the Mediterranean or off the Atlantic coast. The existence of a territorial dispute between Morocco and Spain over the Spanish enclaves of Ceuta and Melilla is just one of the factors at play that have made it impossible for the two countries to reach an agreement on the delimitation of their maritime boundaries in the Mediterranean.

The main bone of contention is the delimitation of the two countries' respective Exclusive Economic Zones (EEZ) and their continental shelves. The existence of an overlap between Rabat and Madrid's continental shelves, as well as their diverging views on which method should govern the delimitation process has doomed all attempts by the two countries to delimit their respective maritime boundaries to failure. While Spain calls for the application of the method of equidistance and median line, Morocco calls for the application of the method of equity, and stresses that any delimitation should result in an equitable outcome, in line with international law. What has made negotiations between the two countries more arduous is the fact that the overlap between their continental shelves lies in the water off the Sahara, which have been under Morocco's de facto sovereignty since 1975. The area where there is overlap between the two countries' continental shelves is called the Tropic, a seamount located 250 miles (453 km) in the southwest of the Canary Islands. Yet this area is rich minerals, especially tellurium, a rare material used in making solar panels, as well as electric cars.¹

The dispute between Morocco and Spain over maritime boundaries came into the spotlight after a committee of the Moroccan parliament adopted two draft bills aimed at

¹ It is believed that the Tropic seamount boasts the world's largest deposits of tellurium. "Hallado en Canarias el mayor yacimiento mundial de telurio, mineral clave para la energía solar," La Vanguardia, April 15, 2017 (<https://www.lavanguardia.com/vida/20170413/421679215565/canarias-yacimiento-teluro.html>).

updating Morocco's maritime laws and asserting Morocco's sovereignty over its maritime zone off the Atlantic coast. The two bills were adopted into law by the Moroccan parliament in a plenary session held on January 22.

This paper will examine the rationale behind Morocco's decision to update its maritime laws, as well as the underlying causes that have prevented Rabat and Madrid from reaching a definitive agreement on the delimitation of their maritime borders off the Atlantic coast. Drawing on the scholarly literature on the topic, as well as on the provisions of international law, the paper will cross-examine the consistency of each country's arguments with international law, especially regarding the method that should be applied in the delimitation process. It will also examine the prevailing argument among Spanish scholars regarding the legitimacy of each country's claims and its consistency with international law, in light of the existence of a pending territorial dispute over the Sahara.

Morocco updates its maritime laws

The Moroccan Parliament adopted and approved Bill 37.17 and Bill 38.17 on Wednesday, January 22. The move comes a month after it was approved by the Committee of Foreign Affairs, National Defense, Islamic Affairs, and Moroccans Living Abroad of the Moroccan parliament.

While bill 37.17 amends and supplements the, of law 1.73.211 of March 2, 1973 on the delimitations of territorial waters, bill 38.17 amends and supplements Act 1.81 and establishes an Exclusive Economic Zone (EEZ) of 200 nautical miles off the Moroccan coast.

The two bills had been pending approval from the parliament since the government initially [approved](#) them in July 2017. The overarching goal of the two draft bills is to update Morocco's maritime laws and adapt them to the 1982 United Nations Convention on the Law of the Sea (UNCLOS), ratified by Morocco in 2007. A second aim was to assert Morocco's sovereignty over the maritime zone off the Sahara (between Tarafay and Dakhla) in order to prevent other countries from encroaching on the country's right to exercise its sovereignty over that vast area.

In statements before the plenary of the parliament, Morocco's Minister of Foreign Affairs, African Cooperation and Moroccan Living Abroad, said that, while Morocco was exercising its sovereign rights and was well within its right to preserve its strategic interests, the kingdom is open to dialogue with states whose maritime waters overlap with those of Morocco:

Morocco will defend its rights, respect its commitments, remain open to the national positions of friendly countries and their legitimate rights, and will be ready for a constructive dialogue to achieve fair compromises on the basis of mutual interest.²

The statement was an implicit reference to Morocco's wish to reach an equitable solution with Spain through negotiations. The Moroccan decision to assert its sovereignty over the waters off the Sahara and to extend its Exclusive Economic Zone (EEZ) to 200 nautical miles and its continental shelf did not, however, go unnoticed in Spain.

² Morgan Hekking, "Morocco Consolidates Maritime Sovereignty off Atlantic Coast with Landmark Vote," Morocco World News, January 23, 2020 (<https://www.moroccoworldnews.com/2020/01/291880/morocco-sovereignty-atlantic-coast-western-sahara/>).

Ever since the adoption of the two draft bills by the Committee of Foreign Affairs, National Defense, Islamic Affairs, and Moroccans Living Abroad in December, Spanish political parties were unanimous in rejecting the Moroccan move and called on their government to clarify its position. Adhering to their traditional fear-mongering stance on Morocco, Spanish media were quick to sound the alarm and warn of an impending diplomatic crisis between Morocco and Spain. In their sensational and twisted reporting of the issue, some Spanish media accused Morocco of invading the Canary Islands and encroaching on Spain's sovereignty over its exclusive zone.³ Others, such as the right-leaning ABC pointed to Morocco's duplicity and its tendency to take advantage of Spain's moments of turmoil or uncertainty to move in such a way that undermine its interests.⁴

Absent in the flurry of reports that were published in Spain, and the frenzy that surrounded the debate over the delimitations of maritime borders between Morocco and the Canary Islands, was any reference to the arguments that may support Morocco's decision to establish its EZZ and enlarge its continental shelf, or whether Spain's claims to sovereignty over the EZZ and its continental shelf between the Canary Islands and Morocco are supported by international law.

A long overdue decision

UNCOLS identifies five maritime zones on which a coastal state can exercise varying degrees of sovereignty: the territorial sea, the contiguous zone, the Exclusive Economic Zone, the Continental Shelf, in addition to the High Sea. According to articles 2 and 3 of the UNCLOS, every coastal state has the right to "establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention." The

³ "Marruecos 'invade' aguas de Canarias ampliando sus fronteras marítimas ante la pasividad de España," Canarias en Red, December 18, 2019 (<https://diariodeavisos.lespanol.com/canariasenred/marruecos-invade-aguas-de-canarias-ampliando-sus-fronteras-maritimas-ante-la-pasividad-de-espana/>).

⁴ Javier Alonso Gutiérrez, "Marruecos le echa un pulso a España delimitando a Canarias como aguas marroquíes en busca del 'tesoro' del Atlántico," ABC, December 18, 2019 (https://www.abc.es/espana/canarias/abci-marruecos-echa-pulso-espana-delimitando-canarias-como-aguas-marroquies-busca-tesoro-atlantico-201912181239_noticia.html).

sovereignty of the coastal state “extends to the air space over the territorial sea as well as to its bed and subsoil.”

The contiguous zone extends between 12 and 24 nautical miles. According to article 33, the coastal state has no sovereignty over the contiguous zone, but has jurisdiction to enforce the respect of its customs, fiscal, immigration, and sanitary laws. The EEZ is the area that extends between 12 and 200 nautical miles. According to article 56, a coastal state has sovereign rights to explore and exploit, conserve, and manage the natural resources, whether living or nonliving. Beyond that area, a coastal state can extend the outer limits of its Continental Shelf to an area not exceeding 350 nautical miles through an application to the UN Commission on the Limits of the Continental Shelf (CLCS). In this area, the coastal state has sovereign rights for the purpose of exploring it and exploiting its natural resources.⁵

With the newly adopted laws Morocco seeks to delimit its territorial sea, its contiguous zone, as well as its EEZ, and its Continental Shelf. The Moroccan government’s decision to update its laws and align with the UNLCOS was long overdue.

While Morocco signed the UNLCOS in 1982, it only ratified it in May 2007. According to article 4 of Annex II of the UNCLOS, a coastal state that seeks to establish the outer limits of its continental shelf beyond 200 nautical miles must submit supporting data to the Commission within a period of 10 years after its ratification of the treaty. Accordingly, Morocco was supposed to submit that data before May 30 2017, which did not happen.

Meanwhile, Spain, having ratified the UNCLOS in January 1997, submitted the scientific data supporting its claims to establish the outer limits of its continental shelf off the Atlantic coast within the period of time stipulated in the UNCLOS. In May 2009, Spain submitted its project to establish the outer limits of its continental shelf beyond 200 miles to the CLCS. In 2014, the European country made its partial presentation of the scientific data supporting its claims over the EEZ, as well as the outer limits of the continental shelf.⁶ Spain then made an oral presentation before the 38th session of the CLCS, held in New York between July 20 and September 4, 2015.

⁵ United Nations Convention on the Law of the Sea, pp. 43-54 (https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf).

⁶ “Presentación parcial de datos e información sobre los límites de la Plataforma Continental de España al Oeste de las Islas Canarias, conforme a la Parte VI y el Anexo II de la Convención de las Naciones Unidas sobre el Derecho del Mar,” 2014 (https://www.un.org/depts/los/clcs_new/submissions_files/esp77_14/esp_2014_es.pdf).

Both in 2009 and in 2015 Morocco sent note verbales to the UN informing the body that it rejects any unilateral decision by Spain to delimit outer limit of its continental shelf, demanding the strict implementation of the provisions of the UNLCOS, as well as the relevant international jurisprudence.⁷

Meanwhile, time was running out for Morocco with only two years remaining before the expiry of 10-year period to submit the scientific data supporting its claims to establish the outer limits of its continental shelf beyond 200 nautical miles. In July 2015, Morocco sent a note verbale to the United Nations including partial preliminary information on the outer limits of Morocco's continental shelf.⁸ Through the same note verbale, Morocco informed the UN that the outer limits of its continental shelf overlap with areas claimed by certain states, particularly Spain, Portugal and Cape Verde. The Moroccan delegation expressed reservations about the application made by Spain as long as an agreement between Spain and Morocco on the delimitation of maritime borders was still pending.

At the expiry of the 10-year limit in June 2017, Morocco sent a second note verbale urging the UN Secretariat to consider the partial preliminary information annexed with the initial note verbale, sent on July 29, 2015, as meeting the requirements of the UNCLOS.⁹ Had Morocco not sent that note verbale in extremis, it would have lost the right to claim the EEZ and the outer limits of the continental shelf. Morocco avoided that scenario by taking advantage of a provision of the UNCLOS that allows developing countries to only submit to the CLCS preliminary

⁷ Note verbale No/NV/187/09 from the Permanent Mission of the Kingdom of Morocco to the United Nations to the Secretariat of the United Nations, May 16, 2009 (https://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/mar_re_esp2009.pdf). Note verbale NV/ATL/N/114/2015, from the Permanent Mission of the Kingdom of Morocco to the United Nations to the Secretariat of the United Nations, March 10, 2015 (https://www.un.org/Depts/los/clcs_new/submissions_files/esp77_14/mor_re_esp77.pdf).

⁸ Note verbale NV/ATL/N/325/2015, from the Permanent Mission of the Kingdom of Morocco to the United Nations to the Secretariat of the United Nations, July 29, 2015 (https://www.un.org/depts/los/clcs_new/submissions_files/prt44_09/mar_re_prt2015.pdf).

⁹ Note verbale NV/ATL/ N385/2017 from the Permanent Mission of the Kingdom of Morocco to the United Nations to the Secretariat of the United Nations, June 20, 2017. Rapport d'informations sur le plateau continental atlantique du Royaume du Maroc au-delà des 200 milles marins (200M), July 2015 (https://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/Mor2015_preliminaryinfo.pdf).

information regarding their continental shelf, while indicating the date when it intends to fully submit its application.¹⁰

Origins of the disagreement between Morocco and Spain

The origins of the ongoing disagreement between Morocco and Spain over their respective maritime borders date back to the late 1970s and early 1980s when both countries enacted a set of laws that set the limits of their respective territorial sea, contiguous zone, EEZ and the outer limits of their continental shelf.

As there have been no conflicting views on the territorial sea and contiguous zone of the Atlantic coast, the main bone of contention relates to the EEZ and the outer limits of the continental shelf. Spain's royal decree of February 1978 established its EEZ off the Atlantic coast, in line with the principle of equidistance unless specified otherwise in international law.¹¹

Conversely, while the decree 1-73-211 promulgated in February 1973 accepted the principle of equidistance and the median line as basis for delimiting Morocco's territorial sea, article 11 of decree 1-81-187, issued in 1981, stipulates that "without prejudging the existence of relevant geographic and geomorphologic circumstances, the delimitation must be done at the bilateral level between states in line with the principles of equity enshrined in international law."¹²

The conflicting views of the two countries regarding the breadth of their EZZ reflected the positions they defended during the Third Conference of the UN on the Law of the Sea, which resulted in the 1982 UNCLOS. During that conference, two positions confronted each other as to what principle should prevail in the delimitation of EEZ: one faction was a proponent of the

¹⁰ Naima Hamoumi, "La Convention internationale du droit de la mer (CNUDUM): un levier pour la connaissance, la protection et la valorisation des espaces marins des Etats parties. Quid de l'adhésion du Maroc?", in *LE DROIT DE LA MER : ENJEUX ET PERSPECTIVES POUR LE MAROC*, Konrad-Adenauer-Stiftung e.V., Bureau du Maroc, 2018, p.29

¹¹ Marcela Iglesias, *Conflicto y cooperación entre España y Marruecos (1956-2008)*, Centro de Estudios Andaluces, 2010, p. 366.

¹² Carlos Espósito, "Sobre el establecimiento de una línea mediana como límite marítimo provisional entre España y Marruecos frente a las costas de las islas canarias," *Revista Jurídica de la Universidad Autónoma de Madrid*, No 13, June 2005, p. 100.

principle of equidistance, and the other defended the principle of equity. While Spain belonged to the first group, Morocco belonged to the second.

The main factor behind Morocco's defense of the principle of equity is the existence of the Canary Islands off the Atlantic coast. From Morocco's perspective, in the event it accepted the principle of equidistance for the delimitation of its EEZ and the outer limits of its continental shelf from the coast of Essaouira to Dakhla, Morocco would lose a big chunk of its EEZ and its continental shelf to Spain due to an overlap with Spain's EEZ in the Canary Islands.

From Morocco's perspective, the Canary Islands are not a state per se, but belong to a continental state. Therefore, they represent relevant circumstances of geographical nature that warrant the application of the principle of equity as enshrined in the UNCLOS.

Because of the different interpretations of the two countries as to which principle of international law should be applied to delimit their respective maritime zones, and because neither country had ratified the 1982 UNCLOS, (Spain ratified in 1997, while Morocco ratified in 2007) there were no formal negotiations between the two countries during the 1980s and 1990s.

It was not until the later part of 2002 that Rabat and Madrid decided to open this thorny file by setting up a working group to set in motion the process for the delimitation of their maritime borders, but most importantly to strengthen cooperation between the two capitals in terms of oil exploration, fisheries, and transportation. However, after nine sessions of the working group no tangible progress was achieved, with each country sticking to its own interpretation of which principle should be applied in the delimitation of their respective EEZ and the outer limit of the continental shelf.¹³

While negotiations on EEZ delimitations, continued to be fruitless as both countries maintained their initial position, Spain and Morocco were clear that this issue should not impact their bilateral relations. Rabat and Madrid, however, arguably agreed, if tacitly, to establish a median line based on the principle of equidistance.

Following the seventh Morocco-Spain high level summit held in Seville in June 2005, some Spanish media alleged that Spain's then Prime Minister, José Luis Rodríguez Zapatero said that

¹³ Congreso de los diputados, Respuesta del Gobierno, June 26, 2017 (http://www.congreso.es/l12p/e3/e_0039472_n_000.pdf).

the two countries had reached that agreement on the understanding that whenever they are willing to negotiate the final status of their maritime borders, they would establish their final median line based on the principle of equity.¹⁴ This report, however, was not substantiated by any official communique from either the Moroccan ministry of foreign affairs or its Spanish counterpart.

Rationale behind Morocco's decision to approve the new laws

Up until the latter part of the 2000's, Rabat and Madrid both sought to keep their unspoken and unofficial understanding about the median line in force. The informal agreement was, however, broken when Spain submitted its project to establish the outer limits of its continental shelf beyond 200 nautical miles to the CLCS. Because of the richness of the continental shelf in the southwest of the Canary Islands, Spain seemed intent on asserting its sovereign right to exploit the waters by seeking the official arbitration of the CLCS.

However, the Spanish move faces two hurdles that make any attempt for it to impose its delimitation unilaterally impossible. The first hurdle is Morocco's opposition to any Spanish attempt to establish the limit of its EEZ and the outer limits of its continental shelf without reaching a bilaterally approved agreement on the basis of equity.

The second hurdle is that the UNCLOS and international jurisprudence make it impossible for any country whose coast faces the coast of another country to impose delimitations without negotiations with the second state. Though article 76 of the UNCLOS stipulates that coastal states have the right to establish the outer limit of continental shelf beyond 200 nautical miles as long as they provide the CLCS within a 10-year period with supporting evidence, the UNLCS also make negotiations between two coastal states the only means to resolve disagreements over the limits of their respective maritime borders.

The centrality of negotiations and agreement exist when there is a dispute or disagreement between two coastal states over the delimitation of their maritime zones. In the

¹⁴ Carlos Espósito, *op. cit.*, p. 93

absence of controversy, the CLCS issues recommendations on the basis of which of the concerned states can accordingly delimit its EEZ and the outer limits of its continental shelf.

Yet, when Spain submitted its partial application in 2014, it made it clear to the CLCS that there was no controversy over the area where it had requested the arbitration of the CLCS. More still, Spain informed the CLCS that “this Partial Submission does not prejudice or harms the setting of the outer limit of the platform continental resulting from the Presentation of Portugal nor the rights that could claimed by a third party in the future.”

In addition, in its oral presentation before the CLCS in August 2015, Spain attempted to gloss over the fact that Sahara is under Morocco’s de facto sovereignty and expressed its readiness to negotiate an equitable solution regarding the outer limits of the Sahara once the decolonization process has been concluded.¹⁵

Spain’s written and oral presentations were problematic and smacked of bad faith for two reasons: first, contrary to Spanish claims, there was controversy over the outer limits of the continental shelf in the area southwest of the Canary Islands and Morocco’s coast, since Morocco regained its de facto sovereignty over the Sahara. One clear proof of the existence of this controversy was Morocco’s move to vehemently reject Spain’s decision to grant an oil prospection authorization to Spanish company REPSOL in late 2001.

In January 2002, Morocco’s embassy in Madrid sent a note verbale to Spain’s foreign ministry, categorically rejecting Spain’s unilateral move and stressing that Morocco was exercising its sovereign rights in its continental shelf, which extends beyond the median line.

By not making any mention of the existence of a dispute between Morocco and Spain, the latter violated the Rules of Procedure of the Commission on the Limits of the Continental Shelf. Annex I of the Rules of Procedure states clearly that in the event of the existence of a dispute between opposite, or adjacent, states over the limitation of the continental shelf, the coastal state making the submission shall inform the Commission of any such disputes and assure

¹⁵ Rafael García Pérez, “Canarias y la previsible ampliación de su plataforma continental: el difícil equilibrio entre España, Marruecos y el Sáhara Occidental,” *Revista de Estudios Internacionales Mediterráneos*, June 6, 2019, p. 123.

the latter that its submission will not prejudice matters relating to the delimitation of boundaries between States.¹⁶

The second reason relates to the absence of any mention of Morocco as a third party that claims sovereign rights over the continental shelf in question. Cognizant of the fact that the UN does not recognize Morocco's sovereignty over the Sahara, Spain sought to deny the validity of Morocco's interest by omission. Through this stratagem, Madrid sought to ensure that its application had all chances to receive a favorable ruling from the CLCS.

In that scenario, Spain would have freedom to delimit the outer limits of its continental shelf in line with its own law and interests, and exploit the maritime zone's natural resources pending the final delimitation that would come with a resolution to the Sahara conflict.

Had Morocco not moved to reject the Spanish unilateral move, it would have lost any rights to claim sovereignty over the area. As already noted, Morocco was quick to react to the first attempts from Spain to assert its sovereign rights over the area. In the note verbale Morocco sent to the UN Secretariat in May 2009, Rabat made clear its rejection of any Spanish move that seeks the unilateral delimitation of the continental shelf, and demanded the application of the international law, as well as the relevant jurisprudence. Morocco expressed its firm attachment to the principle of equity and to article 83 of the UNLCS, which provides that "the delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution."

Furthermore, in the note verbale it sent to the UN Secretariat in March 2015, Morocco renewed its attachment to the principle of equity as provided for in article 83 of the UNCLOS, as well as its rejection of any attempt by Spain to unilaterally delimit the outer limit of its continental shelf. Morocco further urged the CLCS to take its position into consideration when reviewing Spanish partial application.

¹⁶ United Nations Convention on the Law of the Sea, Commission on the Limits of the Continental Shelf, Rules of Procedure of the Commission on the Limits of the Continental Shelf, CLCS/40/Rev.1, April 17, 2008 (<https://www.undocs.org/en/CLCS/40/Rev.1>).

Morocco's recent submission of the two maritime delineation laws for approval in parliament is a calculated move from Rabat to disrupt the smooth running of Spain's application to the CLCS and a bid to force Spain to re-enter fair negotiations about the maritime limits.

There are many factors that will, at best, prevent Spain from claiming its rights over the disputed area and, at worst, delay the process of the approval of its application by the CLCS. The first factor is the time it takes for the CLCS to consider an application and issue a ruling. Were there no dispute surrounding the area claimed by Spain, it would still take over a decade for the CLCS to issue a ruling due to the many applications on its agenda. Of the 85 applications it has received since 2001, the CLCS has only addressed 32 thus far.¹⁷ The Spanish application ranks 77 on the list. By way of comparison, Spain is still waiting for the CLCS to issue a ruling on its application regarding the outer limits of its continental shelf off the water of Galicia, initially submitted in 2009.¹⁸

The second and most important factor is the existence of a dispute between Spain and a third party. The very fact that Morocco has rejected Spanish claims and claimed its sovereign rights over the area will arguably weaken the Spanish application. A condition *sine qua none* for the CLCS to issue a favorable ruling over any given application is the absence of disputes. In line with paragraph 5 of the Annex I of the above-mentioned CLCS rules of procedure, "in cases where a land or maritime dispute exists, the Commission shall not consider and qualify a submission made by any of the States concerned in the dispute." The situation could be made more complicated if Morocco were to also submit an application to CLCS over the same area, a path that Morocco should follow.

¹⁷ United Nations Oceans and Law of the Sea, "Submissions, through the Secretary-General of the United Nations, to the Commission on the Limits of the Continental Shelf, pursuant to article 76, paragraph 8, of the United Nations Convention on the Law of the Sea of 10 December 1982 (https://www.un.org/depts/los/clcs_new/commission_submissions.htm)

¹⁸ United Nations Convention on the Law of the Sea, Commission on the Limits of the Continental Shelf, Progress of work in the Commission on the Limits of the Continental Shelf, CLCS/50/2, September 5, 2019 (<https://undocs.org/en/clcs/50/2>).

Morocco vs Spain: conflicting perspective

In line with the CLCS guidelines, a coastal state must submit the preliminary information on the outer limits of its continental shelf five years before it presents the scientific data supporting its position. Since Morocco presented this preliminary information in July 2017, it has until July 2022 to present the scientific data. With the pending approval of the two laws by the Moroccan parliament, Morocco seems intent on submitting its application to the CLCS before the deadline.

The long-standing dispute between Morocco and Spain about the breadth of their respective maritime borders, and the scholarly debate surrounding it, puts the likelihood of the CLCS considering the applications of the two countries, or even a Morocco-Spain agreement, out of reach.

Drawing its position from laws of 1978 and 2010, which stressed the primacy of the rule of equidistance in the delimitation of its maritime borders, Spain has long insisted that this rule should apply to the case of the dispute pitting it against Morocco off the Atlantic coast. Spain's position is defended by many Spanish scholars who argue that, first and foremost, the continental shelf coveted by Spain in the southwest of the Canary Islands constitutes the geological prolongation of the islands and does not belong, from a geological perspective, to the African continent.¹⁹

Morocco refutes the position that the Spanish government and Spanish scholars defend so vehemently. From Morocco's perspective, the geographical configuration of its coast opposite the Canary Islands, as well as the legal status of the latter makes the application of the principle of equity the only way to reach an acceptable delimitation. As laid out in the notes verbales Morocco sent to the UN Secretariat in March 2015 and July 2017, Morocco bases its position on paragraph 10 of article 76 of the UNCLOS, which establishes that "The provisions of this article are without prejudice to the question of delimitation of the continental shelf between States with

¹⁹ Ángeles Jiménez-García-Carriazo, "La plataforma continental de las Islas Canarias: ampliación y cuestiones afines," Revista Española de Derecho Internacional, Vol. 70/2 July- December 2018, pp. 247-253 (https://www.researchgate.net/publication/327296302_La_plataforma_continental_de_las_Islas_Canarias_ampliacion_y_cuestiones_afines).

opposite or adjacent coasts.” Morocco’s argument also leans on article 83, which states that “The delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.”²⁰

The Moroccan position is, therefore, grounded in both international law and international jurisprudence. Even before the adoption of the UNCLOS in 1982, the application of the method of equidistance had lost its relevance and its prominence as the primary method of delimitation of EEZ and CS. Despite the privileged status given in the 1958 Convention on the Continental Shelf to the method of equidistance, the ICJ and other arbitral tribunals challenged it, arguing that in “in some cases may lead to inequitable and unreasonable results.”²¹ Because of its defects, it was neither regarded as binding law nor as part of international customary law, but merely one method among others in the maritime delimitation process.²² According to Nugzar Dundua, a fellow of the Nippon Foundation, the diminishing prominence that judges gave to the method of equidistance was the main reason that the terms “equidistance” and “median line” disappeared from articles 74 and 83 of the UNCLOS, and why “equidistant” is only mentioned in article 15 of the Convention.²³

Though article 74 of the UNCLOS stresses that delimitation of the EEZ and the outer limit of the continental shelf between states with opposite or adjacent waters should lead to an equitable solution, and article 59 states that any conflict between those states “should be resolved on the basis of equity and in the light of all the relevant circumstances,” it did not, however, provide a clear-cut interpretation as to what method should govern the delimitation of the EEZ in case of conflicts between states.

This absence of clarity as to what specific method should take precedence over the other in delimiting maritime boundaries was the result of the heated debate that characterized the Third United Nations Conference on the Law of the Sea (1973-1982) between proponents of the

²⁰ UN Convention on the Law of the Sea, *op. cit.*, pp. 53-56

²¹ Nugzar Dundua, *Delimitation of maritime boundaries between adjacent States*, United Nations, the Nippon Foundation, 2007, p. 16.

²² *Ibid.*

²³ *Ibid.*

method of equidistance/special circumstances and proponents of the method of equity/relevant circumstances. Morocco was among the 29 countries that advocated the use of the method of equity/relevant circumstances, while Spain among the 22 countries that called for the application of the method of equidistance/ special circumstances.²⁴

The lack of clarity has left the door open for coastal states to make their own interpretations of the UNLCS, with many states leaning towards the application of equidistance²⁵ because it is simple and convenient, and “simply because parties must start somewhere”.²⁶

Historical precedents

As a result of the lack of clarity surrounding the interpretation of the UNCLOS provisions, in an attempt to take into consideration both the concerns of states proponent of the principle of equity and those in favor of the principle of equidistance, the International Court of Justice (ICJ) has established jurisprudence. With this framework, the principle of equidistance is the starting point of the delimitation process. In a second phase, the judge examines whether the provisional equidistant line could become final. In a third phase, in the event the outcome does not meet the requisites of an equitable solution, he adjusts the delimitation line in a way that takes into account the relevant circumstances of each case.²⁷

Notwithstanding the propensity of judges to prioritize the application of the method of equidistance as a first step towards settling disputes between states, international jurisprudence has, however, not applied it blindly to all cases, regardless of whether or not there are relevant

²⁴ The countries that defended the method of equidistance were: group were: Bahamas, Barbados, Canada, Cape Verde, Chile, Columbia, Cyprus, Democratic Yemen, Denmark, Gambia, Greece, Guinea-Bissau, Guyana, Italy, Japan, Kuwait, Malta, Norway, Portugal Spain, Sweden, United Arab Emirates, United Kingdom, Yugoslavia. Countries that defended the method of equity were: Algeria, Argentina, Bangladesh, Benin, Burundi, Congo, France, Iraq, Ireland, Ivory Coast, Kenya, Liberia, Libya, Madagascar, Maldives, Mali, Mauritania, Morocco, Nicaragua, Pakistan, Papua New Guinea, Poland, Romania, Senegal, Syrian Arab Republic, Somalia, Turkey, Venezuela and Vietnam. See Abe Ake Lazare, *The Concept of Equidistance/ relevant Circumstances and the Development of the Law of Maritime Delimitation*, World Maritime University, Malmö, Sweden, 2009, pp. 14-15 (<https://www.peacepalacelibrary.nl/ebooks/files/382721365.pdf>).

²⁵ Carlos Espósito, *op. cit.*, p. 98.

²⁶ See also Nugzar Dundua, *op. cit.*, p.32.

²⁷ Mohammed Adnane Ouzzine, “Aperçu sur la délimitation du plateau continental marocain dans l’océan Atlantique. Recherche réalisée dans le cadre de la thèse doctorale: “la délimitation des espaces maritime marocains,” in in LE DROIT DE LA MER : ENJEUX ET PERSPECTIVES POUR LE MAROC, *op. cit.*, 101.

circumstances. In the ruling that the ICJ issued on the maritime dispute pitting Canada against the United States over the Gulf of Maine in October 1984, the judge ruled that the relevant circumstances of the case under consideration made the adoption of equitable criteria the most appropriate to ensure “with regard to the geographical configuration of the area and the other relevant circumstances, an equitable result.”²⁸ In an explanation of the ruling, the judge argued that the fact that states have more frequently followed a certain method over the other does not make that method the “most intrinsically appropriate” to all cases of delimitation of maritime boundaries. The judge stipulated that:

The greater or lesser appropriateness of one method or another can only be assessed with reference to the actual situations in which they are used, and the assessment made in one situation may be entirely reversed in another (...) In each specific instance the circumstances may make a particular method seem the most appropriate at the outset, but there must always be a possibility of abandoning it in favor of another if subsequently this proved justified. Above all there must be willingness to adopt a combination of different methods whenever that seems to be called for by differences in the circumstances that may be relevant in the different phases of the operation and with reference to different segments of the line.²⁹

In addition, even when judge gave prominence to the method of equidistance, they did so on the understanding that the median line would be corrected in a way that would result in an equitable solution in the case of the existence of relevant circumstances. The best evidence is the dispute between Malta and Libya, which was settled by the ICJ in June 1985.³⁰ In the ruling of the Court adopted by a vote of 14 against 3, the Court rejected Malta’s request that the dispute be resolved based solely on the method of equidistance. It added that the sense that the reevaluation of the idea that distance has given primacy to the method of equidistance through a median line was wrong, emphasizing that while the median line could be equitable, it should not be regarded as the only option as a result of its supposed primacy.

²⁸ International Court of Justice, Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America), Overview of the Case (<https://www.icj-cij.org/en/case/67>).

²⁹ International Court of Justice, Reports of Judgement, Advisory Opinions and Orders, Case Concerning Delimitation of the Maritime Boundary in the Gulf of Main Area, October 12, 1984, p.315 (<https://www.icj-cij.org/files/case-related/67/067-19841012-JUD-01-00-EN.pdf>).

³⁰ Jorge Umaña Vargas, “El caso de la plataforma continental Libia-Malta,” *Revista de Relaciones Internacionales*, Escuela de Relaciones Internacionales. Universidad Nacional, Costa Rica.

Accordingly, the Court resolved the dispute by making the method of equidistance or median line the starting point of the delimitation, then corrected it by taking into account the relevant circumstances: The configuration of the respective coasts of the two parties, and the disparity in the respective extensions of the coasts of each party and the distance between them. Based on this method, the most significant relevant factor that the Court took into consideration was the disparity in the length of the coasts of each party (192 miles for Libya and 24 for Malta).³¹ The ICJ followed the same method in its rulings on the Qatar-Bahrain dispute in 2001, and in the Nigeria-Cameroon dispute in 2002.³²

The case of Libya-Malta presents relevant circumstances that are similar to the dispute between Morocco and Spain off the Atlantic coast. Therefore, it could be used to refute the argument used by Spanish officials and Spanish scholars alike to defend the application of the method that Madrid has always argued, that in the absence of a final argument, the method that should be applied is that of a median line. But the Spanish position overlooks the relevant circumstances of the Canary Islands and the disproportionality between the length of the Moroccan coastline and that of the Canary Islands, not to mention the legal status of the latter as an archipelago.

From Morocco's perspective, any negotiations aimed at reaching an equitable agreement over the maritime borders of both countries must take into account the relevant circumstances inherent to the nature of the respective coastline of each party, namely the configuration of the Moroccan coasts, the length of Moroccan Atlantic coast, as well as the proportionality of Morocco's surface in comparison to the Canary Islands.³³ The relevant circumstances used by Morocco to defend the application of the method of equity are not only supported by the provisions of the UNLCS, which stresses the need to reach a solution based on the principle of equity, but are also sanctioned by international jurisprudence as exemplified by the Libya-Malta

³¹ *Ibid.*

³² Mohammed Adnane Ouzzine, *op. cit.*, p. 101.

³³ For more details about the arguments that back the Moroccan position, see Mohammed Adnane Ouzzine, *op. cit.*, pp. 115-117

case. Moreover, these relevant circumstances have been taken into account by judges in all cases.³⁴

Ever since the ruling of the Court of International Justice in June 1985, the method of equidistance and median line has become the starting point of the delimitation of maritime borders, on the understanding that this line must be corrected in the presence of relevant circumstances; circumstances that do apply to the dispute pitting Morocco against Spain. Through application of the equity method, the delimitation of the EEZ and outer continental shelf between Morocco and the Canary Islands should be based on the following: The length of Morocco's coast between Cap Sim- Dakhla (1,231 km); the length of the Canary Islands (232 km). Based on these calculations, the ratio of the EEZ and the continental shelf of each party would be 5.3 to 1 in Morocco's favor.

Sovereignty and statehood

Spain is aware of the scenario, which explains its bias in favor of the equidistance method. To refute Morocco's claims, Spain argues that argument of relevant circumstances should not be taken into account in the delimitation process. From the Spanish perspective, despite the existence of a disparity in the length of Morocco's coastline and that of the Canary Islands, the UNCLOS establishes that archipelagos can draw straight archipelagic baselines when determining the limits of its continental shelf. Spain bases its position on its law 15/1978, by virtue of which it established the EEZ of the Canary Islands, while giving the latter the status of archipelago. That law "establishes that in the cases of archipelagos, the outer limit of the economic zone will be measured from the straight baselines joining the external points of the islands and rocks by which they are respectively formed, so that the resulting perimeter follows the general configuration of each archipelago."³⁵

Carlos Espósito, professor of public international law at the Universidad Autónoma of Madrid, is among many Spanish scholars who refute the position of some Moroccan scholars that the legal status of the Canary Islands and their location in relation to mainland Spain present

³⁴ Nugzar Dundua, *op .cit.*, p. 55.

³⁵ *Ibid*, pp. 244-245.

relevant circumstances that back Morocco's position to defend the application of the equity method.³⁶ Espósito argues that article 121 of the UNCLOS regulations affords islands the same prerogatives in terms of delimiting their maritime boundaries "applicable to other land or territory."³⁷

However, this claim omits a fact of paramount importance that renders the Spanish position indefensible from a legal perspective. By using the argument of archipelago states, and describing the Canary Islands as an archipelago, Spain is giving the Canary Islands a legal status that is not in line with its legal status within international law. Article 46 of the UNCLOS establishes that an "archipelagic State" is defined as a State constituted wholly by one or more archipelagos and may include other islands; (b) "archipelago" means a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such."

Article 46 of the UNCLOS does not apply to the Canary Islands. The Canaries have never been regarded as an archipelago state, but belong to a continental state, which holds sovereignty over them. For the Canary Islands to be considered as an archipelago, they should already be considered a state per se, which is not the case. In addition, paragraph 9 of article 47 of the UNCLOS establishes that an "archipelagic State shall give due publicity to such charts or lists of geographical coordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations." As Moroccan professor Mohammed Amine Ouzzine pointed out, Spain has not taken that measure.³⁸

Quoting, professors Laurent Luchini and Michel Voelckel, the Moroccan professor said:

³⁶ Carlos Espósito, *op. cit.*, p. 103.

³⁷ Article 121 of the UNCLOS establishes that "Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory."

³⁸ Mohammed Amine Ouzzine, *op. cit.*, p. 115

The rights of an archipelago state are only recognized if this archipelago constitutes a state and when this state is made up of one or several archipelagos. Therefore, archipelagos attached to continental state such as Fareoe Islands, the Canary Islands or the Aegean Islands are excluded.”³⁹

Therefore, the definition outlined in the Spanish law of 1978 has no legal effect and could not be used as basis to enable them to define the limits of their continental shelf based on a straight baseline.

Most Spanish scholars argue that, pending the determination of the final status of the Sahara, Spain has every right to seek arbitration from the ULCS and Morocco does not have any legal standing to dispute Spain’s claims to extend the outer limits of its continental shelf since Morocco has no sovereignty over the waters off the Sahara, nor is it the representative of the interest of the Saharwis. For example, Eduardo Jiménez Pineda, assistant professor of public international law at the University of Granada, argues that since Morocco has no sovereignty over the territory, nor is it regarded by the UN as its colonial or administrative power, a potential agreement on the delimitation of maritime borders between the Canary Islands and the Sahara should not be concluded with Morocco⁴⁰. To back his argument, he refers to the ruling of the European Court of Justice (ECJ) in December 2016 and February 2018, which ruled that the trade deals and the fisheries agreement concluded between Morocco and the European Union could not apply to Sahara since the latter cannot be regarded as part of Morocco.

This argument overlooks two inescapable facts: first when the fishing agreement was signed between Morocco and Spain up until the latter joined the EU in 1986, despite refusing to explicitly recognize Morocco’s sovereignty over the Sahara, Spain let strenuous negotiations with Morocco to obtain fishing rights in the region.⁴¹ Furthermore, the Tri Party agreement signed between Morocco, Spain and Mauritania in November 1975 included a secret clause under which

³⁹ Laurent Lucchini et Michel Voelckel, *Droit de la mer*, tome 2: delimitation, navigation et peche, volume 1: Navigation et Peche, p. 116, Paris, Pedone, 1996, in Mohammed Amine Ouzzine, *Ibid*. Translation from French into English by the author.

⁴⁰ Eduardo Jiménez Pienda, “The Pending Maritime Delimitations between Spain and Morocco,” *Sovereignty, Status and Feasibility*,” *Maritime Safety and Security Law Journal*, November, 2018 (https://www.researchgate.net/publication/328737896_The_Pending_Maritime_Delimitations_between_Spain_and_Morocco_Sovereignty_Status_and_Feasibility).

⁴¹ Samir Bennis, *Maroc-Espagne, les relations politiques économique et culturelle entre le Maroc et l’Espagne 1956-2005*, Editions Confluence, Rabat, 2008, pp. 122-135.

Spain was given access to southern Morocco's territorial waters for period between 15 to 20 years.⁴²

Second, since the fishing agreement with Morocco came under the purview of the EU in 1988, the EU never questioned Morocco's de facto sovereignty over the Sahara. Despite Morocco's hardened position at each renewal of the fishing of the agreement, the inclusion of the Sahara in those agreement was barely a bone of contention between the two parties. For example, following an eight-year long lobbying effort by the European Commission to convince Morocco to sign a new fisheries deal, the two parties signed a new four-year deal in 2007. Despite the opposition of some countries, such as Sweden on the grounds that the agreement included the waters of Sahara, the agreement was adopted without mishap by the EC.⁴³ It was not until 2011 that the inclusion of this territory in the fishing took a new controversial dimension.

Even since the European Parliament started politicizing the question of the fishing grounds off the Sahara, the European Commission has stressed that the agreement does comply with international law. For instance, following the four-year deal signed between Morocco and the EU in July 2013, then EU Fisheries Commissioner Maria Damanaki told reporters:

"I can't predict if the European Parliament would approve this agreement or not, but this one respects the international law and stipulates that Morocco respects international law and human rights."⁴⁴

In its December 2015 ruling, the ECJ annulled the 2012 Morocco-EU agricultural agreement with the argument that when it signed the agreement the EU "did not verify whether the exploitation of natural resources of the Sahara under Moroccan control was done or not for the benefit of the people of that territory." Immediately after the ruling, the ECJ lodged an appeal against the Court's ruling.

In addition, in the midst of the debate about the compliance of EU agreements with Morocco, several European countries, who at first opposed the inclusion of the Saharan waters or products originating from the territory in the agreements, shifted their opposition and voiced

⁴² Miguel Hernando de Larramendi, *La política exterior de Marruecos*, Madrid Mapfre, 1997, p. 390.

⁴³ Hubert Zimmermann, "The European Parliament and the Layered Politicization of the External Dimension of the Common Fisheries Policy," Institute for Political Science, Philipps University Marburg, Germany, 2019, Volume 7, Issue 3, pp.242-243.

⁴⁴ "Morocco agrees fisheries pact with EU," Reuters, July 24, 2013 (<https://www.reuters.com/article/morocco-eu-fisheries/morocco-agrees-fisheries-pact-with-eu-idUSL6N0FU3HM20130724>)

their support for the agreements. For example, after having opposed the renewal of the fisheries agreement in 2011 and 2013, in July 2017 the Danish government defended the legality of imports originating from Sahara.⁴⁵ In January 2018, it called on European parliament to support negotiations of the new fisheries agreement, which was due to expire in July 2018.⁴⁶

The EU adopted the same position following the ruling of the ICJ in February 2018, in which it stated that the fisheries agreement applies to the Sahara since the latter does not fall under Morocco's sovereignty. Despite the ruling, the EU signed a new agreement with Morocco that included the Sahara. The very fact that the EU has repeatedly appealed the rulings of the ICJ and subsequently signed the new fisheries agreement with Morocco and that other individual countries sought to appease Morocco, voicing their support for the agreement, imply a tacit recognition that Morocco is their only interlocutor for any agreement that related to the Sahara.

The same practice has been implicitly sanctioned by the UN Security Council and the General Assembly. Neither body ever refers to Morocco as the colonial or occupying power. Since the inception of the conflict between Morocco and the Algeria-backed Polisario in 1975, the UN has always regarded Morocco as a party claiming sovereignty over the territory. It could not have been otherwise, bearing in mind that Morocco was the first country to challenge Spain's occupation of the Sahara since 1957. It was, in fact, thanks to the pressure Morocco put on Spain in the early 1960s to end its occupation of southern Morocco, including Sidi Ifni and the Sahara, that the United Nations inscribed the latter on the list of non-self-governing territories.

More still, until 1965 the question of the Sahara and Sidi Ifni were discussed in the same package between Rabat and Madrid. It was not until Spain convinced Morocco to dissociate the question of Sidi Ifni from that of the Sahara that UN started to envisage a different track for the region, calling on Spain to allow the Sahrawis to decide their fate through a referendum of self-determination. That referendum was due to take place in 1967, but because of Spain's dilatory attitude and its intent to perpetuate its grip over the territory, that referendum never took place,

⁴⁵ "Danish FM Defends Legality of Imports From Western Sahara," Morocco World News, July 25, 2017 (<https://www.moroccoworldnews.com/2017/07/224353/danish-fm-defends-legality-of-imports-from-western-sahara/>).

⁴⁶ "Denmark accepts continued EU fisheries in occupied waters," Western Sahara Resource Watch, January 15, 2018 (<http://www.wsrw.org/a105x4044>).

with the corollary being King Hassan II's decision to retrieve Morocco's sovereignty with the 1975 Green March.

Since 1980, not a single UN official document has described Morocco an occupying or colonial power in the Sahara. In addition, since the signing of the ceasefire agreement in 1991 and the establishment of the United Nations Mission of the Organization of a Referendum in Western Sahara (MINURSO), the Moroccan flag has been standing side by side with the UN flag in MINURSO's headquarters in Laayoune. Moreover, since the start of the political process in 2007, all Security Council resolutions but one took note of the Autonomy Plan proposed by Morocco and welcomed "serious and credible Moroccan efforts to move the process forward towards resolution," while only took note of the counter proposal submitted by the Polisario.

That the Security Council has, over the past decade, leaned progressively towards a compromise based solution, calling on the parties to achieve a mutually acceptable solution, shows that the winner-takes-all approach that might result from the strict application of the principle of self-determination is no longer viewed by the international community as a viable approach to ending the conflict or preserving peace and stability in the region. Mohamed Ould Abdel Aziz, former President of Mauritania, has pointed to the prevalence of this view among influential powers. In an interview with Palestinian journalist Abdel Bari Atwan, Ould Abdel Aziz said that "The West, Europe and the US, do not want another state geographically separating Morocco and Mauritania. Everything you hear outside of this frame is not correct."⁴⁷

While it would be an overstatement to argue that the practice of EU and its individual states, as well as of the United Nations confer on Morocco any *de jure* sovereignty over the territory, they do constitute a tacit recognition that Morocco, at best, exercises *de facto* sovereignty over the Sahara or, at worst, administrative power, as well as an acceptance among major powers of the fact that the stability of the region would be better off with Morocco preserving its sovereignty over the territory.

The complex nature of the Sahara dispute, and the inability of the UN to put an end to it despite three decades of mediation, show that this conflict has political, historical and

⁴⁷ Tamba François Koundouno, "Mauritanian President: Europe, US, Favor Morocco in Western Sahara," Morocco World News, April 12, 2019 (<https://www.moroccoworldnews.com/2019/04/270422/mauritanian-president-europe-us-morocco-western-sahara/>).

geostrategic dimensions that go hand in hand with its legal dimension. Therefore, any attempt from Spain to ignore these facts and try to bypass Morocco's in the delimitation its EEZ and the limit of its continental shelf will fail and ultimately stir more tension between the two countries.

Conclusion

Morocco's decision to update its maritime laws and align them with the UNCLOS was a move in the right direction to safeguarding the country's strategic interests in the region. As mentioned above, this move is a prelude to the submission of Morocco's application to the CLCS, which is due by 2022. From a legal standpoint, it can be argued that the inclusion of Sahara waters in Morocco's application would push the CLCS to dismiss its claims due to existence of a dispute over that territory. Nonetheless, Rabat should still make its submission, because it holds de facto sovereignty over the territory. Were Morocco not to make such a move, it would imply its renunciation of any territorial claim over the Sahara and its maritime zone, prompting the CLCS to make recommendations in favor of Spain, on the assumption that there is no dispute over the area in question. But the very fact that Morocco will make its submission, notwithstanding any legal considerations, will lead the CLCS to also dismiss Spain's application, thus making negotiations between Rabat and Madrid the only way to establish their respective EEZ and continental shelves.

Moroccan officials are aware that due to the complexity of the Sahara dispute and the provisions of international law, they have no way of imposing a fait accompli on Spain and asserting exclusive control of the disputed maritime zone. That being said, the timing in which Morocco has sought to assert its claims over that area translates its intention to test the waters with the new Spanish government and ensure to what extent it is willing to keep the same level of cooperation, coordination, and compromise that has characterized bilateral ties between Rabat and Madrid over the past 16 years. Morocco's tactical move was all the more expected after the inauguration of a new coalition government that includes left-wing populist party Podemos. The latter has repeatedly expressed its support for the Polisario, prompting many observers in Morocco to wonder whether Spain will stick to its position of positive neutrality on the conflict.

Rabat's strategy has succeeded in that Madrid did not only stress that the delimitation of maritime boundaries off the Atlantic coast can only be achieved through negotiations between the two countries, but it also renewed its support for the UN-led political process to help the parties achieve a mutually acceptable political solution, in which the option of the referendum of self-determination is ruled out. Spain's position on the delimitation of their maritime borders and the Sahara conflict was laid out in the statement that its foreign minister, Arancha González Laya, made following a meeting with her Moroccan counterpart Nasser Bourita on January 24. González said that Morocco has every right to delimit its maritime borders, pointing, however, the need to reach solutions based on negotiations when there is overlap between the two countries.⁴⁸ Regarding the Sahara, the Spanish official stressed the centrality of the UN-led political process, while stating that her country's position does not change depending on which coalition is heading the government.⁴⁹ The statement was clearly meant to reassure Morocco that Spain's position will remain unchanged and will not be affected by the presence of Podemos in the government coalition.

Because the question of delimitation of maritime zones between Morocco and Spain has both legal and political ramifications, the only way forward for the two countries to reach a solution to this dispute is through negotiations. Despite the sensitivity of the subject, Morocco and Rabat would be better off to steer away from any propensity to adopt maximalist positions that do not take into consideration the interests and concerns of the other party. The two countries have come a long way in strengthening their political ties over the past 16 years. Unlike in the past, relations between Rabat and Madrid have reached such a level of maturity that the latter's foreign policy towards the former is no longer contingent on the ideology of the political party heading the government.

The two countries need each other be it at the economic, political, or security levels. Spain has become Morocco's first economic partner over the past five years, ahead of France, with a

⁴⁸ "Marruecos y España rebajan la tensión tras aprobar Rabat la ampliación de sus fronteras marítimas," *El País*, January 24, 2020 (https://elpais.com/politica/2020/01/24/actualidad/1579853378_597651.html).

⁴⁹ Safa Kasraoui, "Spain Reiterates Support for UN-Led Political Process on Western Sahara," Morocco World News, January 24, 2020 (<https://www.moroccoworldnews.com/2020/01/292011/spain-un-led-political-process-western-sahara/>).

trade balance that is still favorable to Madrid. Morocco is, on the other hand, Spain's first economic partner outside of the EU after the United States. In addition, Morocco plays a key role in the implementation of Spanish migration policy, as well as in the fight against terrorism. On the other hand, Morocco has enjoyed tacit support from Spain over the past decade on the Sahara issue. While Spain was, for a long time, among the countries which insisted on the need to resolve the question of the Sahara by means of the referendum of self-determination, the rhetoric it has adopted in recent years no longer makes any reference to the referendum of self-determination. What is more, Spain seems to be increasingly in favor of the need for the parties to the conflict to reach a mutually acceptable political solution, as advocated by all the resolutions of the Security Council adopted since April 2007.

In addition, Spain, like France, is among Morocco's main supporters within the European Union. Spain has played a key role in the increase of the budget that the EU allocates to Morocco to curb the flow of illegal immigration. In addition, following the verdicts of the European Court of Justice which invalidated the fishing and agriculture agreements between Morocco and the latter on the pretext that the Sahara is not under Morocco's sovereignty, Madrid as well as Paris put pressure on the EU to appeal the verdicts of the Court of Justice and include the Sahara in both the agriculture agreement and the new fisheries agreement, signed in July 2019.

Consequently, neither of the two sides will benefit from bilateral relations entering a zone of turbulence because of the delimitation of their respective maritime spaces. In the absence of the possibility for the two countries to reach a final settlement to this dispute, Rabat and Madrid will have to find a *modus operandi* which will allow them to manage it in a spirit of understanding and cooperation. This *modus operandi* should take the form of a provisional solution whereby the two countries could, as an alternative to a definitive delimitation of their maritime boundaries, opt for a co-management of their natural resources. This alternative is also enshrined in international law.⁵⁰

⁵⁰ Carlos Espósito, *op. cit.*, p. 107. Article 74 and 83 of the UNCLOS stipulate that: "Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation." UN Convention on the Law of the Sea, *op.cit.*, pp. 52-56

