



# Western Sahara & The 1975 ICJ opinion

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# MAP OF THE WESTERN SAHARA



Western Sahara, 1876

515010/156

# **The False Moroccan Claim to Western Sahara**

## Overview

1. Morocco's historical claim to Western Sahara
2. The 1975 ICJ opinion



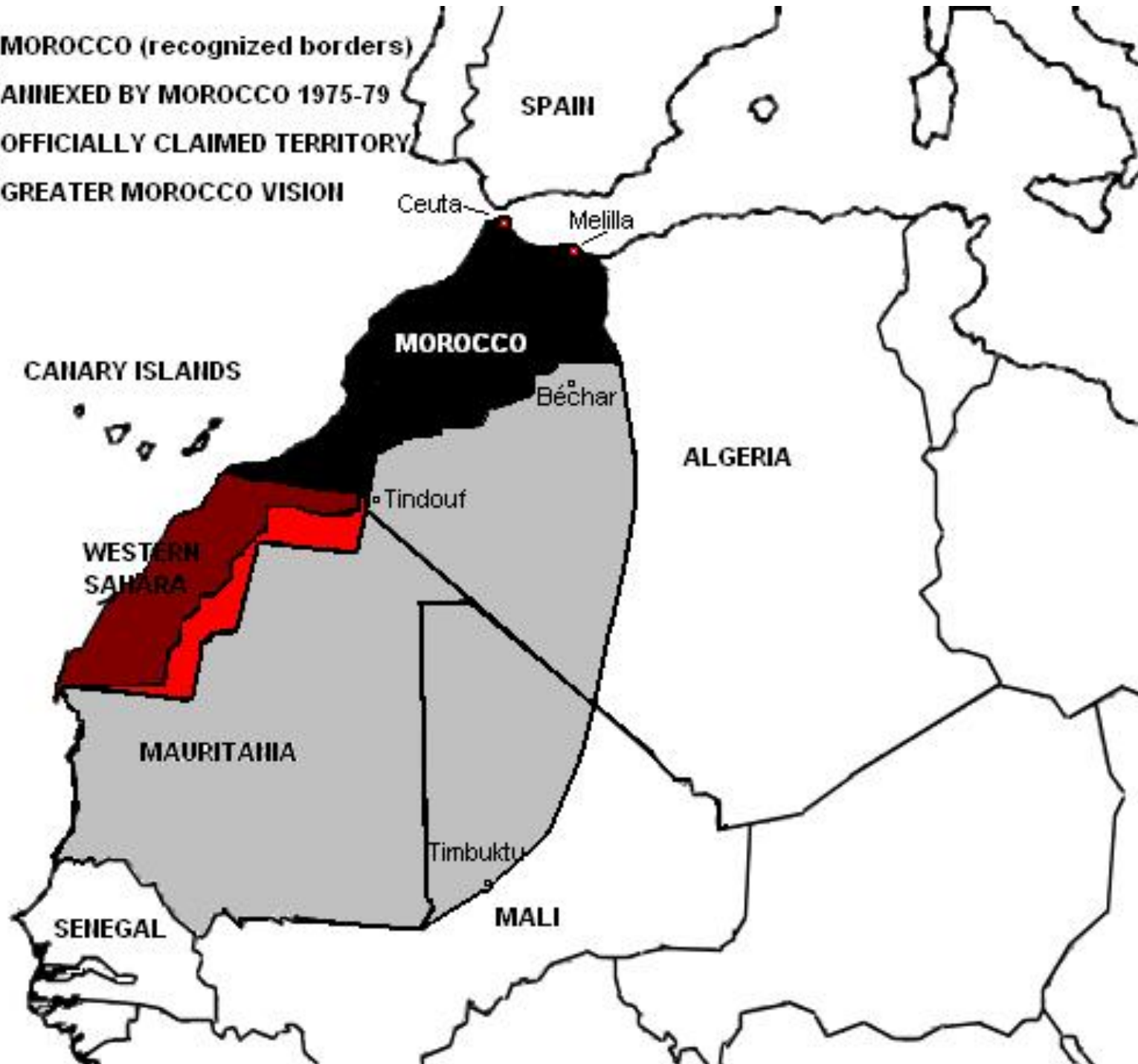
## علال الفاسي Allal al-Fassi

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Monarchist ideologue,  
poet, politician and  
founder of the Istiqlal  
Party who promoted the  
irridentist “Greater  
Morocco” vision.

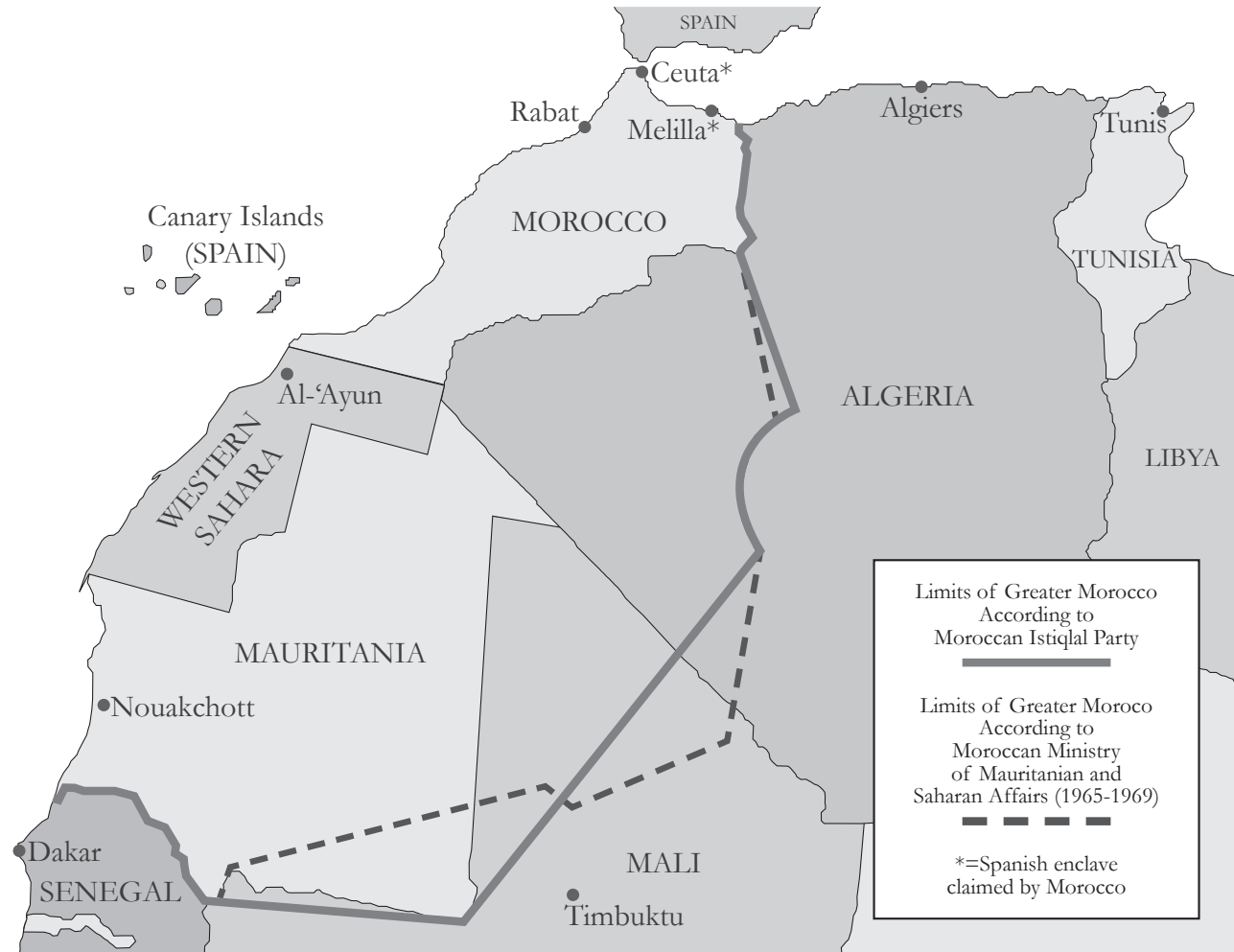


-  MOROCCO (recognized borders)
-  ANNEXED BY MOROCCO 1975-79
-  OFFICIALLY CLAIMED TERRITORY
-  GREATER MOROCCO VISION



# Morocco's “historical” claim to Western Sahara

- 1956: Istiqlal Party, monarchy
- 1960: Mauritanian counter claim



# The 1975 ICJ opinion

## Background to ICJ opinion

- 1974: Spain announces referendum on independence for Western Sahara
- 30 September 1974: Morocco asks for *binding* ICJ arbitration from UN General Assembly
- Spain agrees to ICJ *advisory opinion* in context of UN charter and decolonization principles

# The 1975 ICJ opinion

UN General Assembly Resolution 3292 (13 Dec. 1974):

I. Was the Western Sahara (Rio de Oro and Sakiet El Hamra/ساقية الحمراء) at the time of colonization by Spain a territory belonging to no one (*terra nullius*)?

If the answer to the first question is in the negative,

II. What were the legal ties between this territory and the Kingdom of Morocco and the Mauritanian entity?



# The 1975 ICJ opinion

Question I: Was Western Sahara terra nullius?

ICJ: No.  Why?

In 1885 Western Sahara was

‘inhabited by peoples which, if nomadic, were socially and politically organized in tribes and under chiefs competent to represent them’ (ICJ 1975)

# The 1975 ICJ opinion

## 2. The 1975 ICJ opinion

The ICJ's first conclusion (Question I):

- In 1885, Western Sahara belonged to the native Western Saharans.
- That is, the Sahrawi people of Western Sahara were the sovereign power in 1885

So ICJ moved to question 2 despite the territorial claims of sovereignty of Morocco and Mauritania, not because of them

# The 1975 ICJ opinion

## 2. The 1975 ICJ opinion

Question II: What were the legal ties between this territory and the Kingdom of Morocco and the Mauritanian entity?

Morocco's argument:

- A. Internal (domestic) displays of sovereign relations
- B. External (international) displays of sovereign recognition

# The 1975 ICJ opinion

## A. 'Internal' recognition of Moroccan sovereignty

- Evidence: 'Immemorial Possession' since Islamic conquest (c. 700 CE)

ICJ Opinion: Evidence is 'far-flung, spasmodic and often transitory character of many of these events' ; 'the historical material somewhat equivocal as evidence of possession of the territory.'

# The 1975 ICJ opinion

## A. 'Internal' recognition of Moroccan sovereignty

- 'Geographical Unity': Denmark claim on Greenland: control part = control whole

ICJ: Greenland was *terra nullius*; W. Sahara was not *terra nullius*

# The 1975 ICJ opinion

## A. 'Internal' recognition of Moroccan sovereignty

Nature of the pre-colonial Moroccan 'Sherifian State':

1. Areas outside of direct control of state (bilad al-siba) recognized Moroccan sultan as sovereign power based upon his spiritual authority (amir al-mu'minin)

ICJ: No evidence for this in Western Sahara — or even Southern Morocco (Dra'a + Sus)



# The 1975 ICJ opinion

## A. 'Internal' recognition of Moroccan sovereignty

- Nature of the pre-colonial Moroccan 'Sherifian State':

- 2.a. Ties of allegiance between Sahrawi leaders (al-qa'id) and Sultan: dahirs relating to Tikhna tribal leaders

ICJ: Morocco's evidence only relates to areas in Morocco and not Western Sahara

# The 1975 ICJ opinion

## A. 'Internal' recognition of Moroccan sovereignty

- Nature of the pre-colonial Moroccan 'Sherifian State':

2.b. Ties of allegiance between Sahrawi leaders (al-qa'id) and Moroccan Sultan: Shaykh Ma' al-'Aynayn was a deputy of the Moroccan sultan in the Sahara

ICJ: Not convinced Ma' al-'Aynayn acted on Sultan's behalf

# The 1975 ICJ opinion

## A. 'Internal' recognition of Moroccan sovereignty

- Nature of the pre-colonial Moroccan 'Sherifian State':

2.c. Ties of allegiance between Sahrawi leaders (al-qa'id) and Moroccan Sultan:

Hassan I visited region in 1884 and 1886; leaders pledged allegiance (al-bay'ah)

ICJ: in 1884 (before 1885), Hassan I visited S. Morocco — Sus and Nun only. All evidence (qa'ids, dahirs, taxation) only applied to S. Morocco, not W. Sahara

# The 1975 ICJ opinion

## A. 'Internal' recognition of Moroccan sovereignty

### ICJ conclusion:

'even taking account of the specific structure of the Sherifian State'

the ICJ could not find 'any tie of territorial sovereignty'

Morocco had not 'displayed effective and exclusive State activity in Western Sahara'

# The 1975 ICJ opinion

## B. 'External' recognition of Moroccan sovereignty

### Morocco's Evidence

- Treaties between Morocco and other governments:
  - › Spain (1776 & 1861)
  - › Great Britain (1836 & 1895)
- Treaties between other governments concerning Morocco
  - › 1911 French-German correspondence

# The 1975 ICJ opinion

## A. 'External' recognition of Moroccan sovereignty

### The 'Shipwreck' Treaties:

- 1767 Treaty of Marrakesh
- Morocco: Spain recognized Sultan's authority to Nun and beyond
- But: Spanish version says Moroccan 'domination does not extend so far' (south of Nun)



# The 1975 ICJ opinion

## A. 'External' recognition of Moroccan sovereignty

### The 'Shipwreck' Treaties:

- 1861 treaty
  - › Morocco: Spain recognized Sultan's authority over Sahrawi tribes (e.g., Esmeralda case)
  - › Spain: a local leader, not Sultan, released crew of Esmeralda

ICJ: not proof of Spanish recognition, only proof of 'influence' in Nun

# The 1975 ICJ opinion

## 2. The 1975 ICJ opinion

### B. 'External' recognition of Moroccan sovereignty

#### The 'Shipwreck' Treaties:

- 1895 treaty with England
  - › Morocco: British recognition of Moroccan sovereignty

ICJ: Moroccan interpretation not supported by diplomatic correspondence: 'the position repeatedly taken by Great Britain was that Cape Juby [Tarfaya, Morocco] was outside Moroccan territory.'

# The 1975 ICJ opinion

## 2. The 1975 ICJ opinion

### B. 'External' recognition of Moroccan sovereignty

Other evidence:

- 1911 French-German understanding
  - › Morocco: Recognition of control over Saqiyah al-Hamra'
  - › Spain counter-argument: French-Spanish conventions 1902/1912 (before and after 1911) established borders

ICJ: 1911 understanding recognized Saqiyah al-Hamra' as area of French influence, not Moroccan control

# The 1975 ICJ opinion

## 2. The 1975 ICJ opinion

### ICJ Summary:

#### Morocco's case:

1. Immemorial possession
2. Geographical Continuity
3. Internal displays of sovereignty
4. External displays of sovereignty

ICJ could not see : 'any legal tie of territorial sovereignty between Western Sahara and the Moroccan State'

# The 1975 ICJ opinion

## 2. The 1975 ICJ opinion

### ICJ Summary:

‘the materials and information presented to [ICJ] do not establish any tie of territorial sovereignty between the territory of Western Sahara and the Kingdom of Morocco or the Mauritanian entity’ (i.e., Bilad Shinqiti)

# The 1975 ICJ opinion

## 2. The 1975 ICJ opinion

### ICJ Summary:

- ‘a legal tie of allegiance between the Sultan and some, though only some, of the tribes of the territory’ (i.e., Tikhah sub-groups).

But — ‘Thus the court has not found legal ties of such a nature as might affect the application of resolution 1514 (XV) in the decolonization Western Sahara and, in particular, of the principle of self-determination through the free and genuine expression of the will of the peoples of the Territory’



# The 1975 ICJ opinion

ICJ vote:

- 14 - 2 : against Morocco
- 15 - 1 : against Mauritania

16 October 1975:

Hours after ICJ opinion released, Morocco announced intent to invade the Spanish held Western Sahara

# The 1975 ICJ opinion

## 3. The situation today

- 2002 UN Legal Opinion re-affirms Western Sahara is non-self-governing & de jure colony of Spain
- Morocco's presence is an occupation under International Humanitarian Law and recognized by UN General-Assembly
- European Court of Justice has affirmed this