

***HIDĀYAT MAN ḤĀRĀ FĪ AMR AL-NAṢĀRA:***  
**THE WESTERN SAHARA'S MISSING WITNESS AT**  
**THE INTERNATIONAL COURT OF JUSTICE**

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***Abstract***

The disputed Western Sahara is one of many cases where the colonial borders drawn across Africa did not translate into a coherent postcolonial state. Although dozens of legal and historical studies have already analyzed the 1975 International Court of Justice ruling on the Western Sahara, this article brings a highly relevant and previously neglected document into dialogue with the court proceedings. *Hidāyat man ḥārā fī amr al-Naṣāra* (“Guidance for Whomever is Confused Regarding the Christians”) was a legal ruling on territorial defense written in 1885 by a central figure in Morocco’s nationalist narrative: Saharan scholar and resistance leader al-Shaikh Mā al-‘Aynayn (1831-1910). Although Morocco held Mā al-‘Aynayn up as proof of its “immemorial possession” of the disputed Western Sahara, the case did not consult Mā al-‘Aynayn’s own thought or literature to see how he represented and interpreted historical events as they unfolded. *Hidāyat man ḥārā fī amr al-Naṣāra* offers new insight into how Saharan figures negotiated authority and legitimacy on the eve of colonization – especially internal debates regarding whether to contract peace with European settlers or forcibly expel them. The *fatwa*’s concepts of territory and sovereignty are compared to the historical narratives presented at the International Court of Justice in 1975.

**Keywords:** Western Sahara, Mauritania, Morocco, International Court of Justice (ICJ), United Nations, *fatwas*.

***Résumé***

Le territoire contesté du Sahara Occidental est l’un des nombreux cas où les frontières coloniales tracées à travers l’Afrique n’ont pas permis d’aboutir à la constitution d’un État postcolonial pérenne. Bien que de nombreuses études juridiques et historiques se sont penchées sur le jugement de la Cour Internationale de Justice de 1975, cet article fournit un document hautement pertinent et jusqu’ici négligé, qui permet de discuter les actes de la Cour. *Hidāyat man ḥārā fī amr al-Naṣāra* (« Conseils pour qui est désorienté par les chrétiens ») était une décision légale au sujet de la défense du territoire, rédigée en 1885 par une figure centrale du discours nationaliste marocain: le savant saharien et leader de la résistance al-Shaikh

Mā al-‘Aynayn (1831-1910). Bien que le Maroc utilise Mā al-‘Aynayn comme preuve de sa « possession immémoriale » du Sahara Occidental contesté, le tribunal n’a pas examiné l’opinion elle-même ou les écrits de Mā al-‘Aynayn pour déterminer comment celui-ci se représentait et interprétait les événements historiques au moment où ils se déroulaient. *Hidāyat man hārā fī amr al-Našāra* offre de nouvelles perspectives pour apprécier comment des notables sahariens ont négocié autorité et légitimité au début de la colonisation – en particulier quelle fut la teneur des débats internes pour déterminer s’il fallait signer un accord de paix avec les colons européens ou les expulser par la force. Les concepts de territoire et de souveraineté exprimés dans la *fatwa* sont comparés aux récits historiques présentés à la Cour internationale de Justice en 1975.

**Mots-clés:** Sahara Occidental, Mauritanie, Maroc, Cour internationale de Justice (CIJ), Nations unies, *fatwas*.

The re-entry of Morocco into the African Union (AU) in January 2017 briefly brought the suspended question of the disputed Western Sahara back onto an international stage (Mohammed 2017). The African Union had historically supported Western Saharan aspirations of independence from Morocco as a legitimate decolonization struggle, and the Sahrawi Democratic Republic (SADR) became a member back in 1982. However, one year after rejoining the AU, Morocco was able to effectively push the Western Sahara off the organization’s agenda and relegate it to a UN concern (PSC Report 2018). This represents a considerable win in the kingdom’s efforts to retain control of a mineral-rich territory where neither colonial borders nor precolonial history effectively translated into a coherent nation-state (San Martín 2010: 49-50). Although the United Nations brokered a ceasefire in September of 1991 and both Morocco and the Polisario Front agreed to a referendum on independence, it has never been held (King 2014: 71-91). Morocco’s berm wall cuts Saharans living in Algerian refugee camps off from those living in the Moroccan-occupied portion of the northwest Saharan and the kingdom’s control of the region continues with the help of American and French military aid (Mundy & Zunes 2010: 83).

If the ideal of the nation-state can be seen as our time’s dominant narrative of space, history, and identity, then the 1975 International Court of Justice (ICJ) proceedings on the Western Sahara can be read as efforts to translate the northwest Sahara’s precolonial past – especially the late nineteenth century – into the idiom of nationhood. This was no easy feat considering both the anachronistic nature of the endeavor and the fact that the northwest Sahara (*i.e.* the Ḥassanophone region) has long been self-

described as lacking central rule and as prioritizing tribal loyalties (N'Diaye 2017: 36)<sup>1</sup>. At the International Court of Justice, both Morocco and Mauritania staked their claims to this quarter of the Sahara by using selected aspects of history to index nationalist ideals: Saharan displays of allegiance to the 'Alawite sultans in Morocco's case, and the Saharan Ādrār Emirate's role in uniting nomadic *Hassaniyya*-Arabic speakers across tribes in Mauritania's case. Mauritania also argued that the emirate was proof that the territorial concept of "Bilad Shinguitti" was effectively a predecessor of modern Mauritania. Both sides emphasized European documents and testimonies: Mauritania, for example, highlighted the fact that one of the *amīrs* of the Ādrār Emirate signed a treaty with the French explorer Lieutenant Léon Fabert (1848-1896) (ICJ *Western Sahara Vol. III* 1975: 21-22, 85, 101). However, it was ultimately Morocco who was more invested in integrating the northwest Sahara: Mauritania withdrew all claims to the territory in 1979 (Reuters 1979). Morocco also submitted a total of 197 documents to the ICJ as compared to Mauritania's eleven. Several of Morocco's sources focus on the links between the Saharan scholar, *Sufi*, and anticolonial resistance leader Mā al-'Aynayn ibn Muḥammad Faḍīl ibn Māmīn (1831-1910) and the Moroccan 'Alawite sultans (ICJ *Western Sahara Vol. III*: 222, 356-7, 474, 475-6, 478, 480). As the ICJ set time parameters emphasizing the period just prior to Spanish colonization of the Sahara, Morocco zoomed in on the construction of Villa Cisneros in the Dakhla Peninsula, pointing first to the Moroccan sultan's protests to Madrid before describing early Saharan resistance to colonization:

Le 9 mars 1885, deux mois après le début de la construction d'un fort à Villa Cisneros, les Espagnols subissent leur première attaque de la part des Marocains. Celle-ci se solde par la destruction de la construction, l'incendie des baraquements et par plusieurs morts et blessés du côté de l'occupant, obligeant les derniers survivants à se réembarquer pour les Canaries. Cette attaque donne lieu à une protestation officielle du Gouvernement espagnol auprès du Sultan, reconnaissance implicite mais significative du véritable maître de la terre (*op. cit.*: 159).

What has come to light since the 1975 court proceedings, however, is the role that Mā al-'Aynayn's political strategy played in this battle. Not only did the *shaiikh* participate in the Battle of Dakhla, he wrote about its aftermath. He defended his fighters' seizure of Spanish property after the Amīr of Ādrār challenged its legality and demanded payment. This incomplete account of Mā al-'Aynayn's legacy is actually apparent throughout the ruling as not one of the dozens of books he wrote were

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<sup>1</sup> See also the discussion of nineteenth-century sources on p. 11 of this article.

consulted as a source for understanding XIX<sup>th</sup>-century Saharan ideas of territory and political legitimacy. Although Mā al-‘Aynayn was discussed at length in the ICJ ruling and some of his correspondence to the Moroccan court was submitted for deliberation, his own thought was not taken into consideration (ICJ, *Western Sahara Advisory Opinion 1975*: § 102-103, pp. 46-47).

After the ICJ ruled that no existing state had strong enough evidence of immemorial possession to overrule the Sahrawis’ right to self-determination (*Ibid.*: § 92, p. 43), Mā al-‘Aynayn only became a more widespread nationalist symbol within Morocco. Dozens of books about the *shaikh* have been printed in the decades following the 1975 ruling, and the Moroccan government sponsors a yearly academic conference around his life and legacy (Al-Mukhtār 2019). In the process of studying Mā al-‘Aynayn, Moroccan scholarship still frames his life as proof of the kingdom’s immemorial ties to this quarter of the desert. However, thanks to this ongoing scholarly interest Mā al-‘Aynayn’s legal argument legitimizing the 1885 Battle of Dakhla as an act of self-defensive *jihād* is now accessible. It can be analyzed as a primary source despite the fact that the paratext of the 1999 reproduction still frames the *fatwa* in nationalist terms:

As is evident from [the book's] title and from the issues it addresses, it returns to the [collective] memory an important event from the southern Moroccan regions near the end of the last century: the 1885 Battle of Dakhla. This was a historic event that played a large role in igniting the feelings of Moroccan nationalism (*waṭanīyā*) in this historical period and in the obstruction of colonial projects in the Saharan regions (Mā’ al-‘Aynayn 1999: 8).

The introduction then goes on to allude to the “Spanish conspiracy against Moroccan unity”, implying that Saharan nationalism is a colonial plot. This echoes other Moroccan publications about the *shaikh*, such as the historical study “*Al-Shaikh Mā’ al-‘Aynayn wa-jihāduhu al-‘ilmī wa-al-waṭanī*” (“Al-Shaikh Mā al-‘Aynayn and his Scholarly and Nationalist Endeavor”) which states that “The organization would like to thank the respected author for allowing it the honor of printing this book... during this time in which the Moroccan people are eager to close the Saharan issue once and for all”, implying that Mā al-‘Aynayn’s literature and anticolonial *jihād* offer clear proof of which nation-state can legitimately claim the northwest Sahara (Mā al-‘Aynayn 1995: 6).

Of course as a nineteenth-century African Mā al-‘Aynayn did not speak the language of nation-state. While Morocco speaks now of *waṭanīyā*, the *shaikh* himself never used the term “*waṭan*”, (meaning country or homeland) and nor did he use “*dawla*” (the equivalent of state). Mā al-‘Aynayn did not rally his followers around the cause of a united Moroccan state: this conception would have no meaning to them. Rather, he negotiated a

complex web of sometimes competing and often overlapping boundaries and loyalties (tribal divisions, *Sufi* paths, Islamic empires) in order to ensure the ultimate goal of evading Christian conquest (Patrizi 2015: 320, Martin 1976: 125). Mā al-‘Aynayn alludes to this complexity in *Hidāyat man ḥārā* when he asserts that there was no time to consult the sultan before defending the Dakhla Peninsula against the Spanish occupiers (Ma’ al-Aynain & ibn Muḥammad Fāḍil 1999: 77).

As this article will show, his *fatwa* both describes the reality of *sība* – often translated as dissidence or anarchy but here referring to the lack of central rule – and advocates for a new political reality in which all Muslims will unite around a single ruler. This theme of Muslim solidarity and unity comes to the fore in other famous writings by Mā al-‘Aynayn such as his poem declaring “*I am in Brotherhood with All the Paths*” and the accompanying *sharḥ* (explanatory text) in which he asserts that his *Sufi* upbringing and practice never involved taking prayers or practices from a single path or brotherhood (*ṭarīqa*) to the exclusion of another (Ibn Muḥammad Fāḍil & Al-Zarīf 1999: 42).

Before presenting Mā al-‘Aynayn’s portrayal of space and sovereignty on the eve of colonization, however, it is important to understand the geographic concepts Mauritania and Morocco relied on in their efforts to translate precolonial history into nationalist terms: Bilād al-Shinqīṭ and Bilād al-Sība.

### ***Shinqīṭ and Takrūr: the Bilād and the Ḥajj***

Mauritania presented the northwest Sahara as integral to its nationhood by evoking the territorial concept of Bilād al-Shinqīṭ, or “Bilad Shinguitti” as it was referred to in the ruling. The International Court of Justice summarized Mauritania’s argument as follows:

That [Mauritanian] entity was the Bilad Shinguitti or Shinguitti country, which constituted a distinct human unit, characterized by a common language, way of life and religion. It had a uniform social structure, composed of three 'orders': warrior tribes exercising political power: marabout tribes engaged in religious, teaching, cultural, judicial and economic activities: client-vassal tribes under the protection of a warrior or marabout tribe (ICJ, *Western Sahara Advisory Opinion 1975*: § 131, pp. 57-58).

This description is accurate in terms of the common cultural and social traits it highlights as shared across *Hassaniya*-speaking Saharan tribes. What is less clear, however, is the extent to which those living within the region identified with the concept of Bilād Shinqīṭ prior to Spanish colonization or referred to themselves as *shinqīṭī*. In fact, a brief conceptual history of Bilād Shinqīṭ shows that – like its predecessor Bilād Takrūr – it was a loosely-

defined exonym and never a unified social-political identity nor a clearly demarcated geography.

One of the first references to Bilād Takrūr appeared in *Kitāb al-Masālik wa al-Mamālik* (“The Book of Routes and Kingdoms”) by the XI<sup>th</sup> century Andalusian historian Abū ‘Ubayd ‘Abd Allāh ibn ‘Abd al-‘Azīz Bakrī. Bakrī describes a Muslim Kingdom located on the Senegal River called “Bilād al-Takrūr” which fought alongside the Almoravids (al-Naqar 1969: 4). Long after Takrūr stopped being a capital city in this region, however, the designation of “Bilād Takrūr” was still used by Muslim geographers and the term sometimes encompassed the northwestern part of the Sahara. Mauritanian historian Ḥamāh Allāh wuld al-Sālim notes that, for a time, Arabs in the Middle East and the Hijaz designated all scholars from the northwest Sahara or sub-Saharan Africa as “‘Ulamā al-Takrūr” (scholars of Takrūr), further supporting this connection (Wuld al-Sālim 2004: 5). The *takrūrī* designation was apparently embraced by some Saharan scholars as well, such as Muḥammad ibn Abī Bakr al-Ṣiddīq Bartallī al-Walātī (d. 1219/1805) whose biographical dictionary *Fath al-shakūr fī ma‘rifat a‘yān ‘ulamā’ al-Takrūr* (“The Gracious Opening in Knowledge of the Nobles of the Takrūrī Scholars”) includes figures from the Saharan towns of Chinguetti (“Shinqīṭ” in Arabic) and Walata as well as the regions of Tagant and the Gibla (al-Walātī 1981).

Although there are a couple of earlier texts which used the term “Bilād al-Shinqīṭ”, it appears to have become more widespread than “Bilād al-Takrūr” sometime during the XIX<sup>th</sup> century. Like Bilād Takrūr, it was also a Middle Eastern exonym. The scholar Sīdī ‘Abd Allāh ibn al-Ḥājī Ibrāhīm (d. 1818) says of the term “shinqīṭī”:

The caravan would leave from Chinguetti (Shinqīṭ) every year and those from all horizons who wanted to would make the pilgrimage with it, until the people of these lands (hādhihi al-bilād) – I mean from the Saqiya al-Hamra to the Sudan to Arwan – became known among the people of the Mashriq as “al-Shanāqīṭa”<sup>2</sup> even until now (bin Muḥammad Maḥmūd 2001: 37-38).

The slippage between Bilād Takrūr and Bilād Shinqīṭ parallels the late-XIX<sup>th</sup> century debate in the Hijaz regarding whether Bilād Shinqīṭ was part of Bilād al-Maghrib or Bilād al-Sudan. The *Mufti* of Medina eventually ruled that the “Shanāqīṭa” were from Bilād al-Sudan, which barred them from charitable trusts and scholarly positions designated for Maghribis (Wuld al-Sālim 2004: 257-258). This further supports the observation that the

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<sup>2</sup> The plural of *shinqīṭī* is sometimes spelled with a (ع) as “*al-Shanāqīṭa*” instead of with a (ق) as “*al-Shanāqīṭa*”.

designations of “shinqīṭī” and “takrūrī” were strongly tied to the process of pilgrimage and encountering Muslims from outside of the region: neither concept was endogenous. How influential, then, would the concept of Bilād Shinqīṭ have been among populations in the northwest Sahara? Was Mauritania correct to assert that this conception and identity was a precursor to their nation-state?

The main reason a *shinqīṭī* identity is unlikely to have been widespread among Arabophone populations in the northwest Sahara is that the *hajj* itself was not common. There were *hajj* caravans leaving from Walata and Chinguetti in the XVIII<sup>th</sup> and XIX<sup>th</sup> centuries, and there also existed a network of Saharans living in the Mashriq and the Hijaz along with charitable trusts (*ḥubus*) for Saharan pilgrims. Yet, many *‘ulamā* from the northwest Sahara ruled that the *hajj* was not obligatory considering its especially arduous nature (al-Idrīsī 2009: 114). Historian Charles C. Stewart notes in his study of al-Shaikh Sīdiyya al-Kabīr (1775-1868) that “The pilgrimage (*hajj*) was an observance which required impressive fortitude, and in the early nineteenth century was undertaken only with extreme difficulty for the West African pilgrim. As a result, until the present [i.e. 20th] century relatively few Moors took part in the *hajj*” (Stewart & Stewart 1973: 67).

Mā al-‘Aynayn himself provides an illustrative example: despite his father’s status as an influential political figure on both sides of the Senegal River, Mā al-‘Aynayn was the first of his family to complete the pilgrimage to Mecca and make it back alive (McLaughlin 1997). If this was a common or expected outcome, then his *hajj* would not have been recorded as a miraculous deed by his descendants (Ibn al-‘Atīq 2004: 318). Furthermore, Mā al-‘Aynayn never references Bilād Shinqīṭ or describes himself as “*shinqīṭī*” in his pilgrimage travelogue. He mentions that there is a trustee of the Shanāqīṭa in Mecca, as it is only in the Hijaz that such an appellation had meaning (ibn Muḥammad Fāḍil & Murabbīh Rabbuh 2010: 69).

The other issue regarding Mauritania’s narrative is the extent to which Saharans saw the *amīrs* of the Adrār as unifying rulers whose power superseded tribal alliances and divisions. Mauritania certainly aimed to paint the rulers of the Adrār Emirate in such a light, stating:

At the time of the Spanish colonization of Western Sahara, Mauritania maintains, the Emir of the Adrar was the principal political figure of the north and north-west Shinguitti country, and possessed “an influence extending from the Sakiet El Hamra to the Senegal”. In this connection, it invokes the testimony of the Spanish explorer, Captain Cervera, who in 1886 concluded with the Emir at ‘Ijil a treaty by which, had it been ratified, Spain would have been recognized as sovereign of the whole Adrar at-Tmarr (ICJ *Western Sahara Advisory Opinion 1975*: § 133, p. 58).

This matter comes to the fore in *Hidāyat man ḥārā* as Mā al-‘Aynayn addresses his ruling to Aḥmad bin Imḥammad bin ‘Īdah (d. 1898) who ruled the Ādrār emirate from 1872 to 1891.

### ***From Bilād al-Sība to Saharan Wing***

Before describing Mā al-‘Aynayn’s conception of Saharan sovereignty and self-defense as outlined by his *fatwa*, it is important to understand the fluid nature of contact between the northwest Sahara and the Moroccan Sultanate. Prior to colonization, many regions of Morocco were not directly under the Moroccan sultan’s control, which is why Morocco asked that “the Court should take account of the special structure of the Sherifian State (*op. cit.*: § 94, pp. 43-44).” In the precolonial period, areas where tribal rule was stronger than the Moroccan sultan’s influence were referred to as “*bilād al-sība*”, whereas those which consistently paid taxes to the treasury were “*bilād al-makhzen*” (lands of the treasury) (Castellino & Domínguez-Redondo 2014: 49). The northwest Sahara was usually part of “*bilād al-sība*”, although neither category was rigid or absolute (Trout 1969: 24). Historically the ‘Alawite sultans would lead occasional raids called *maḥallas* or *ḥarkas* against the refractory tribes in order to re-assert authority (Raymond 1977: 273). Those living on the fringes of the sultan’s influence would also usually recognize him as a religious authority.

Scholars have recently called into question whether the *bilād al-sība/bilād al-makhzen* divide is primarily a colonial construct (Mohamed 2012: 6). For example, Moroccan historian Abdallah Laroui summarizes “Colonial ideology represented the *bilād al-sība* as independent territories, in which the Sultan's sovereignty was purely nominal and amounted only to religious influence” and argues that this was simply a colonial interpretation of Moroccan norms of rulership (Laroui 1985: 93). Edmund Burke III shows how French colonial rhetoric pushed the idea that the Makhzen (central government) and the tribes were in perpetual conflict in order to both justify colonization and to blame all French policy failures on the supposedly anarchic and tribal nature of Morocco (Burke 2014: 77). Most historians acknowledge that there were tribes and regions which paid taxes to the sultan and those which did not but, as André Raymond summarizes, “[t]here was moreover no real frontier between the submissive *bled el-makhzen* and the dissident *bled el-sība*: their respective areas varied according to the power of the government, and some tribes lived in an intermediate state between total submission and independence.” (Raymond 1977: 274). Stephen Baier similarly notes that most parts of the *bilād al-sība* were economically and culturally tied to *bilād al-makhzen* (Baier 1978: 5).

However, what is missing from these discussions is how the term *sība* was used prior to colonization. The concept of *sība* appears in precolonial

Arabic sources from both the Amazigh-majority areas of the Atlas Mountains and from the northwest Sahara (Kīkī & Tawfīq 1997: 146). The idea is also enduring, as anthropologist Amal Rassam Vinogradov noted that the Ait Ndhir Amazigh tribe still alluded to the days of “*sība*” during her fieldwork (Vinogradov 1974: 5). David M. Hart also found that his interviewees from the Saharan Rgaybat (Reguibat) tribe still referred to the precolonial period as a time of “*sība*” (Hart 2007: 43). In both of these cases *sība* was used to refer to a political state of affairs rather than a bounded territory, an important nuance from the colonial misinterpretation.

In Aḥmad Tawfīq’s analysis of Muḥammad ibn ‘Abd Allāh Kīkī’s (d. 1771) compilation *Mawāhib Dhī al-Jalāl fī nawāzil al-bilād al-sā’ibah wa-al-jibāl* (“Noble Gifts in the Rulings of the Dissident Lands and the Mountains”), Tawfīq translates *bilād al-sība* as “the country where justice is not administered” (*op. cit.*: 147). Based on the longer trajectory of *fiqh* literature Tawfīq argues:

...“*sā’iba*” is not a creation of a colonial literature, and that its original meaning is related to the condition of the practice of Islamic justice, and the nature of rapport between the governor and the governed, which are both assimilated to the relationship between the shepherd and his herd (*Ibid.*: 146).

Mauritanian scholar Aḥmad Maḥfūz Mannāh similarly shows that jurists from the Ḥassanophone region used the term *sība* to describe the tense atmosphere of the northwest Sahara and to argue for greater unity and centralization (Mannāh 1994: 46). For example, in a text written slightly after Mā’ al-‘Aynayn’s time, al-Shaikh Sīdīyah Bābah laments that the reason for the current and past wars between the scholarly tribes occupying the northwest Sahara is the *sība* of these parts (ibn Muḥammad Maḥmūd: 44). Sīdī Muḥammad bin al-Mukhtār Kuntī (1765-1826), son of the famous *Sufī* Shaikh al-Mukhtār Kuntī (1730-1811), referred to “*al-bilād al-sā’iba*” in his political epistle *Al-Risāla al-Ghalāwīya* (Kuntī & wuld al-Sālim 2013: p. 291). Al-Shaikh Muḥammad al-Māmī (1792-1866) also described the northwest Sahara as existing in a state of *sība*, meaning there was no central ruler for the tribes to unite around and instead they could attack or be attacked at any moment (Acloque 2014: 127). Thus, Mā’ al-‘Aynayn alludes to a larger body of legal thought when he refers to the Dakhla Peninsula and its surroundings as “*sa’iba*” (Mā’ al-‘Aynayn: 78-79). To return to the ICJ, Morocco did not argue to the court that this division never existed, but rather that it “merely described two types of relationship between the Moroccan local authorities and the central power, not a territorial separation” (ICJ *Western Sahara Advisory Opinion 1975*: § 96, pp. 44-45). What then, would this relationship have been on the eve of colonization?

The degree to which the Ḥassanophone tribes identified with the ‘Alawite domain is nebulous. One disciple of Mā’ al-‘Aynayn’s father, Abū Bakr ibn

Aḥmad al-Muṣṭafá Maḥjūbī, included an XVIII<sup>th</sup> c. Moroccan sultan in his biographical dictionary of the *Sufi* saints of Bilād al-Takrūr<sup>3</sup>, showing that some scholars from the Ḥawḍ considered the ‘Alawites to be figures of Islamic authority (McLaughlin: 124). There were also two other scholars from the Ḥassanophone region who visited the court of the Sultan Mawlāy ‘Abd al-Raḥmān (r. 1822-1859) before Mā al-‘Aynayn did, but neither of them went on to establish ongoing political ties to the ‘Alawites (Norris 1977: 8, 18). In fact, as H.T. Norris observes, reading Mā al-‘Aynayn’s predecessor Aḥmad ibn Ṭuwayr al-Jannah’s (1788-1849) record of his 1829 visit seems to reveal the sultan’s total ignorance of the region. Mawlāy ‘Abd al-Raḥmān asks ibn Ṭuwayr al-Jannah about whether there is any agriculture or scholarship in the Sahara. In turn, ibn Ṭuwayr al-Jannah suggests that scholarship in the sultan’s region could be improved by offering better sponsorship of the ‘*ulamā*, showing that he did not see the ‘Alawite court as a destination for learning (*Ibid.*).

To return to Mā al-‘Aynayn, it does not appear that he identified with the Moroccan domain by the time he set out on his pilgrimage. In fact, in one story associated with his *hajj*, the *shaikh* states that in his lands there is no sultan and instead each tribe has a leader which they defer to. He also refers to *Ḥassāniya*, the dialect of Arabic spoken in Mauritania and the Western Sahara, as his language (ibn Muḥammad Fāḍil & Murabbīh Rabbuh: 46-47). Thus the ties he established with the ‘Alawite Sultans should be considered a deliberate political strategy rather than a natural and inevitable consequence of a long-standing association. Considering that Mā al-‘Aynayn grew up in the Ḥawḍ (what is now southeastern Mauritania bordering Mali), he could have connected his *jihād* to the legacy of *Sufi* resistance leader al-Ḥājj ‘Umar Tāll (1794-1864) and promoted a trans-Saharan Takrūrī entity with the neighboring Futa Toro. Or he could have sought an expansion of one of the Saharan emirates, as he had cultural and familial ties to the Ādrār (ibn Aḥmad Sālim 2004). Theoretically, he could have even approached the Ottomans for the military and symbolic aid the ‘Alawites provided him, as they did sponsor the scholarly work of Saharan Muḥammad Maḥmūd Shinqīṭī al-Turkuzī (1829-1904). (Shinqīṭī al-Turkuzī 1901). However, the ‘Alawites represented the strongest bulwark against European colonization and so a mutually-beneficial alliance was formed.

By visiting the Moroccan Sultan and swearing an oath of loyalty (*bay’a*) to him during his *hajj*, the young Mā al-‘Aynayn began his career of strengthening ties between his Saharan *Sufi* followers and the ‘Alawite

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<sup>3</sup> The biographical dictionary, which was apparently styled after a compilation by Muḥammad ibn Abī Bakr al-Ṣiddīq al-Bartallī al-Walātī, was titled *Minaḥ al-Rabb al-Ghaḥūr fī dhikr mā ahmala ṣāḥib Faṭḥ al-Shakūr*.

domain through writing, building *zawiyas* in major Moroccan cities, and making frequent scholarly visits to the court. When he built his flagship *Sufi* city of Smāra it was not an expression of Morocco’s “immemorial possession” of the northwest Sahara. Rather, it was a strategic political move to strengthen the links between the Ḥassanophone domain and the seat of Moroccan power. Did the relationship between the *shaikh* and the sultan, however, constitute one of co-operation between equals – as Spain and Mauritania argued before the ICJ – or was it an extension of the ‘Alawite sultans’ authority? This is one of the primary issues *Hidāyat man ḥārā fī amr al-Naṣārā* can provide new insight into.

### ***Law, Order, and Geography in Mā al-‘Aynayn’s Fatwa***

Shaikh Mā al-‘Aynayn wrote his legal ruling *Hidāyat man ḥārā fī amr al-Naṣārā* in 1885, one year after Spain proclaimed a protectorate over the Rio de Oro, and one year after what the UN ruling marked as the beginning of “the time of colonization by Spain” (ICJ *Western Sahara Advisory Opinion 1975*: § 77, p. 38). The Battle of Dakhla also took place one year before the *Amīr* of Ādrār drafted a treaty with a Spanish explorer, an event which formed a crucial point in Mauritania’s argument (*op. cit.*: § 133, p. 58). In addition to the Spanish settlements in the northwest Sahara, Scotsman Donald MacKenzie had set up a trading post at Tarfaya (“Cape Juby”) after concluding an 1879 treaty with al-Shaikh Mohamed Beyrouk (Trout: 150). The strategy of piecemeal colonization, or gradually building more settlements by making trading contracts with *Sufi* and tribal leaders, had begun. Xavier Coppolani, the architect of Mauritania’s colonization, would soon start applying the same strategy from French West Africa moving north in 1901.

While some Saharan leaders accepted the foreign presence in exchange for certain privileges and concessions – including Mā al-‘Aynayn’s own brother Sa’adbouh – Mā al-‘Aynayn was the principal figure of *jihād* in the region and was actively pushing Saharans to unite around the Moroccan sultan in order to resist colonization. The *shaikh* led fighters from the Awlād Dulaym, Awlād Tīdirārīn, and al-‘Arūsiyīn tribes in attacking Spanish settlers in the Dakhla Peninsula in 1885. After they successfully drove the Spaniards out and seized their property, Aḥmad bin Imḥammad bin ‘Īdah, the *Amīr* of the Saharan Ādrār emirate, approached the fighters and demanded a share of the spoils on the basis that he had a contract (*‘aqd*) with the settlers (Mā al-‘Aynayn & ibn Muḥammad Fādīl: 13-14). In response, Mā al-‘Aynayn wrote this *fatwa* justifying the tribes’ right to their plunder on several grounds, including that the Christians involved did not have “*dhimmi*” (protected minority) status.

Reading the *fatwa* firsthand shows that – contrary to recent scholarship dismissing *sība* as a colonial construct – Mā al-‘Aynayn describes the region

surrounding the Dakhla Peninsula as existing in a state of *sība*. Rather than supporting the nationalist narrative of an eternal and unchanging bond between ‘Alawite Morocco and the northwest Sahara, it also indicates that Mā al-‘Aynayn was propagating a vision of all Muslims uniting around a single Islamic authority and repelling foreign invasion while also describing a space where political loyalties were fluid and the Moroccan sultan’s power was usually understood in abstract terms. Additionally, the text shows that Mā al-‘Aynayn’s erudition was clearly a source of authority. He argues for sovereignty and self-defense using evidence from the Qur’ān, the Ḥadīth, and the *fiqh* tradition, and these sources come up much more frequently than any particular political figure. The most heavily cited source after the Qur’ān and the Ḥadīth is the *tafsīr Rūḥ al-Bayān* (“The Spirit of Elucidation”) by Ottoman *Sufi* scholar Ismā‘īl Ḥaqqī Ibn Muṣṭafā (1652-1725).

Although “*Dār al-Islām*” and “*Dār al-Ḥarb*” are the primary geographic designations in the larger *fiqh* tradition, Mā al-‘Aynayn opts to speak in terms of “*Bilād al-Muslimīn*”, hinting at a more fractured and less territorially contiguous geography than “*dār*” (domain). The *shaikh* does not attempt to define what larger entity the Dakhla Peninsula belongs to, but rather speaks in terms of “these lands” (*hādhihi al-bilād*) or “our lands” (*bilādina*) or “the lands of the Muslims” (*bilād al-Muslimin*). There is not a single reference to *Bilād al-Maghrib* or *Bilād Shinqīṭ*.

While it could be that a man with such a large transregional network opted to speak in vague terms in order to make the ruling applicable elsewhere, the inclusion of many local referents and figures belies this theory and show that the *fatwa* assumed a deep background knowledge of the northwest Sahara. Mā al-‘Aynayn references Muḥammad bin Sayyid Balkhayr Āzragī, a noble of the Saharan Āzragīn tribe, without elaborating on who he is despite the fact that his contacts in Cairo or even in Fez would not have heard of him. Similarly, he refers to the Imraguen, a tributary social group which subsists on fishing, without explaining who they are:

I knew without any doubt that those unbelievers of which we are speaking ambushed the Lands of the Muslims with their entrance in it and upon [the Muslims] without permission from anyone. As such, fighting them became the duty of whoever was near them since they invaded the Imraguen who do not have the ability to defend themselves (*op. cit.*: 77).

In this excerpt, specifically local references coexist with the geographic ideal of *Bilād al-Muslimīn*, thus translating Islamic solidarity into terms relevant to the northwest Sahara. While “*Bilād al-Dakhla*” or “*Bilād al-Imraguen*” would be more specific, the *shaikh* creates a sense of solidarity across existing social divisions by using the term *Bilād al-Muslimīn*. Through this ideal, he can then call on his audience to come to the armed defense of other groups around them in the case of an outside invasion.

The lack of reference to *Bilād al-Maghrib* or to *Bilād al-Makhzen* should also be understood as the *shaikh*'s diplomatic dealing with an *amīr* who recognized the authority of the Moroccan sultan in a more abstract sense<sup>4</sup>. For this reason, there is only one brief mention of the Moroccan Sultan Mawlāy al-Ḥasan (r. 1873-1894), who is shown as an example of an Islamic authority signing off on a tribal raid against Christians after the fact. Mā al-‘Aynayn relays a story in which the aforementioned Āzragī seizes the house of a Spanish settler and then sells it (*Ibid.*: 78). Mā al-‘Aynayn then explains that ‘the news reached the Sultan Mawlāy al-Ḥasan, so he made supplications for his [Āzragī’s] well-being and said “there was nothing he was to do other than kill him [i.e. the Spaniard], as it happened like this. By God, let there be only the contract which they call the contract of combat which the Ahl al-Ghazāl [tribe] and others act on!”’ (*Ibid.*: 77). Thus the sultan’s authority comes to the fore in the sense of approving an act of war which is already accomplished as Islamically correct, not as the man who must be consulted before undertaking a raid or battle.

As the previous passage alludes to, Mā al-‘Aynayn also built part of his justification for the raid on the political fluidity of the northwest Sahara. The lack of an accessible central authority made seeking permission from the sultan or an *amīr* impractical in the case of a sudden invasion. Thus, as was the case in Dakhla, when the Christians invaded it was the duty of all nearby Muslims to contribute to the defensive *jihād*. In this passage, he addresses the *Amīr* of Ādrār’s main objection to the Battle of Dakhla: that the latter had a treaty (‘*ahd*) with the Spanish settlers:

As for the claim of the dissenting authority [*i.e.* the *Amīr* of Ādrār] that they [the Christians] sent themselves to him: they sent themselves to each tribe that covers these lands (*hadhahi al-bilād*) which they invaded. This was with their knowledge of its anarchy (*sība*) and the lack of rule, for the most part, of any of its people over anyone. And what is that from them [the Christians] other than cheating the Muslims, and baiting them against each other? What I verified of this was eight documents, and all of them say “we have a treaty.” Due to this [strategy], they did not mention who came to them, as you claim, [saying] that they have a treaty with anyone (*Ibid.*: 78).

Mā al-‘Aynayn goes on to connect *sība* to the nature of relations between the Ḥassanophone tribes and the Christians, and to point to this as precedence for dealing with non-Muslims in the region. Thus his argument

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<sup>4</sup> Pierre Bonte notes that, according to one source, increased trade between the Ādrār and Morocco prompted the Sultan Mawlāy al-Ḥasan to send a delegation to Aḥmad bin Imḥammad bin ‘Īdah in 1880. However, there is no evidence that bin ‘Īdah ever consulted the sultan in political matters (Bonte 2014).

defending the Saharan *jihad*, at least as he presents it to another Saharan authority figure, is based more on the region's lack of a sultan than it is on the material and spiritual endorsement Mā al-ʿAynayn received from the Moroccan sultan. Here “*sība*” can be understood to be the lack of a mutually agreed upon law, contract, or authority:

What treaty is there between the people of these lands (*ahl hathahi al-bilād*) with the Christians other than killing and capturing? This was from the time of [the XI<sup>th</sup> c. Lamtuna Berber who lead the Murābiṭūn movement] Bubakr bin ʿĀmir, God rest his soul. They were [*i.e.* the lands] from that time anarchic (*sāʿiba*). (*Ibid.*: 78-79).

Although *Hidāyat man ḥārā* concerns a local dispute, Mā al-ʿAynayn was well-travelled and well-read, and his ruling still displays an expansive geographic imagination. Mā al-ʿAynayn places the Battle of Dakhla within the context of struggles against colonization throughout the larger Islamic World, expressing shock at those who think the Christian invasions will not harm the Muslims. This must be, he surmises, due to their ignorance of what the Christians have always done during their invasions, from Al-Andalus in the past to Algeria in the present – not to mention the Christian meddling in Alexandria, Cairo, and Istanbul (*Ibid.*: 103). He concludes that the Christians are “a people who only want to own Muslim lands or rather, if they could, their necks,” and that this was apparent from the beginning, when they seized the land of the Imraguen while acting like they were helping them (*Ibid.*: 101).

Although the *shaikh*'s descriptions of how authority and territory played out in the XIX<sup>th</sup> c. northwest Sahara may leave doubts about the true extent of Moroccan sultan's influence, it should be noted that *sība* does not reflect Mā al-ʿAynayn's political ideal. Near the end of his *fatwa*, he introduces the concept of “*Imām al-Muslimīm*” (Leader of the Muslims) and calls for a single Islamic authority who protects all Muslims from the unbelievers' invasions:

However, the Leader of the Muslims is responsible for the security of those [Muslims] outside of his region (*iqṭīm*), in other words an innumerable number, even if it is not one of The Seven Regions which are: India, Hijaz, Egypt, Babel, Rome, Turkey, Gog and Magog, and China. As for the Maghrib and the Levant, they are from Egypt as evidenced by the sameness of their inhabitants. Yemen and Abyssinia are part of the Hijaz. Each subregion of these regions is 700 leagues, so there are innumerable mountains and valleys planted like them. The great sea surrounds that, and it in turn is surrounded by the mountain of Qāf (*Ibid.*: 93).

In sum, while other categories of places and peoples are referenced, it is clearly religious boundaries which matter in *Hidāyat man ḥārā fī amr al-*

*Naṣārā*. Similar to the *fatwa* of *Sufi* resistance figure al-Amīr ‘Abd al-Qādir (1808-1883) of Algeria, Mā al-‘Aynayn always refers to the invaders as Christians or nonbelievers, and the current conflict with them is compared to boundary shifts in Islamic Spain (Woerner-Powell 2011: 237). Neither the Ottoman nor the ‘Alawite domains are referenced in specific terms, but rather the emphasis is on defending “*Bilād al-Muslimīn*” from Christians. He does not imply that “*Imām al-Muslimīm*” is any specific person ruling at his moment in history, but rather alludes to this figure as a Pan-Islamic ideal. Foundational Islamic texts are referenced much more heavily than any particular political figure. Thus, although there is no way to know whether or not Mā al-‘Aynayn would have wanted the Western Sahara to be ruled by the current Moroccan monarchy, it is anachronistic to turn him into a nationalist. While he may not have collaborated with the ‘Alawite Sultans as a complete equal, he was active in negotiating competing loyalties and rallying different parties around the ultimate cause of resisting Christian occupation of the northwest Sahara. He envisioned a Sahara united around a single Muslim ruler who would defend their lands and all others from foreign invasions.

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