Algeria - Angola - Bolivia - Cuba - Ecuador - Mozambique - Namibia - Nicaragua Nigeria - South Africa - Tanzania - Timor Leste - Venezuela - Zimbabwe

Members of the

**Geneva Support Group for Western Sahara**

**Invite all delegations to the 35th session of the UN Human Rights Council to**

**a side-event on**

**Implementation of UNGA resolution 1514**

 **in Western Sahara**

**Wednesday 7th June 2017 – 1:00 to 3:00 PM – Room XXIV**

**Panelists:**

***H. E. Amb. Sabine Böhlke-Möller –*** *Permanent Representative of Namibia*

***H.E. Amb. Marciano da Silva*** *– Permanent Representative of Timor Leste*

***H.E. Amb. Nozipho J. Mxakato-Diseko -*** *Permanent Representative of South Africa*

***H.E. Mr. Mohamed Sidati –*** *Minister for Europe of the Sahrawi Arab Democratic Rep.*

***Prof. Marcelo Kohen –*** *Geneva Graduate Institute (Switzerland)*

***Mrs. Garazi Hach Embarek –*** *Sahrawi National Commission of Human Rights*

***Moderator:***

***Mr. Pierre Galand –*** *Former Member of the Senate (Belgium)*

*Oriental buffet will be served before the meeting*

Afrique du Sud - Algérie - Angola - Bolivie - Cuba - Equateur - Mozambique -Namibie - Nicaragua - Nigeria - Tanzanie - Timor Est - Venezuela - Zimbabwe

Membres du

**Groupe de Soutien de Genève pour le Sahara occidental**

**Invitent toutes les délégations à la 35ème session du Conseil des droits de l’Homme**

**à un side-event**

**Application de la résolution 1514 (XV)**

 **au Sahara occidental**

**Mercredi 7 Juin 2017 – 13:00 à 15:00 – Salle XXIV**

**Intervenants:**

***S. E. Amb. Sabine Böhlke-Möller –*** *Représentant Permanent de Namibie*

***S.E. Amb. Marciano da Silva*** *– Représentant Permanent de Timor Est*

***S.E. Amb. Nozipho J. Mxakato-Diseko -*** *Représentant Permanent d’Afrique du Sud*

***S.E. M. Mohamed Sidati –*** *Ministre pour l’Europe de la RASD*

***Prof. Marcelo Kohen –*** *Geneva Graduate Institute (Suisse)*

***Mme Garazi H. Embarek –****Commission Nationale Sahraouie pour les droits de l’homme*

***Modérateur:***

***Mr. Pierre Galand –*** *Ancien Membre du Sénat (Belgique)*

*Buffet oriental servi avant la réunion*



**OPENING REMARKS BY H.E. SABINE BӦHLKE-MӦLLER**

**PERMANENT REPRESENTATIVE OF NAMIBIA**

**AT THE SIDE EVENT**

**IMPLEMENTATION OF UNGA RESOLUTION 1514 IN WESTERN SAHARA**

**GENEVA SUPPORT GROUP FOR WESTERN SAHARA, - 7 JUNE 2017**

**Your Excellencies,**

**Distinguished panelists,**

Distinguished delegates,

Ladies and gentlemen,

In my capacity as coordinator of the Geneva Support Group for Western Sahara, I would like to welcome you all to this side event which focuses on the implementation of UNGA Resolution 1514 in Western Sahara. The resolution was adopted in 1960 and was hailed as a milestone in the process of decolonization.

Resolution 1514 established for Namibia in 1960 the inalienable right to freedom and independence, yet we had to wait another 30 years of great suffering for our eventual freedom and independence. Similarly, Resolution 1514 established for Western Sahara the inalienable right to freedom and independence in 1960, but almost sixty years later the peoples of Western Sahara are yet to be freed.

Namibia regards itself as a child of international solidarity midwifed by the UN. It is the same solidarity we need to help Western Sahara to realize their right to self-determination. It is only few days ago that H.E. Dr. Hage Geingob, President of Namibia said that we should not fold our hands and look the other way, while the rights and aspirations of the Saharawi people are being suppressed.

The Geneva Support Group for Western Sahara was established by representatives of fourteen countries (Algeria, Angola, Bolivia, Cuba, Ecuador, Mozambique, Namibia, Nicaragua, Nigeria, South Africa, Tanzania, Timor Leste, Venezuela and Zimbabwe), who don’t want to look the other way, but who want to consolidate support for the people of Western Sahara in the spheres of **Human Rights and humanitarian issues**. This *Group* was joined by the American Association of Jurists (AAJ) and the Representative of Polisario Front in Geneva.

I am pleased that for our second side event we could again attract very distinguished politicians, academics, diplomats and human rights experts who with their vast experience and insight will, no doubt, enrich this discussion**. I am very grateful that you are here today. With these few welcoming words I would like to hand over to the moderator.**

I thank you.



**STATEMENT ON WESTERN SAHARA**

**H.E. Marciano da Silva**

**Ambassador and Permanent Representative of Timor-Leste**

**Implementation of UNGA Res. 1514 in Western Sahara**

Excellencies, ladies and gentlemen,

I am glad to be here among the panelists, representing Timor-Leste. This is the second time I speak as panelist on the issue of Western Sahara.

It is truly an honor to represent Timor-Leste among the other panelists to speak on the cause of Western Sahara. We know that the people of Western Sahara have struggled more than 40 years for its independence and despite the many challenges, they continue to fight for self-determination of the country. We are also aware that the Saharawi are not alone in this journey. We are glad that the Geneva Support Group for Western Sahara is promoting dialogue aim at finding a solution to the problem.

I had the opportunity to attend the celebration of the 40th anniversary of the proclamation of independence of Western Sahara, here in Geneva, and listened to the representative of Saharawi during the event, I was convinced that the independence of the Saharawi is absolute certain. It is only a question of time. I saw how committed they are and that reminded me of the years of Timorese struggle for independence, which took 24 years.

We know that no matter how long the occupation is going to take, Morocco cannot stop the will and the determination of the Saharawi to be free as people and as a nation.

I, therefore, should like to appeal to the international community to play its key role in promoting dialogue and finding a just and acceptable solution.

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I now speak as the representative of Timor-Leste and I use this occasion to reiterate my country’s unwavering support for the right to self-determination of the people of Western Sahara.

Excellencies, ladies and gentlemen,

In May this year, the President of the Republic of Timor-Leste, H.E. Mr. Francisco Lu-Olo received the Ambassador of the Sahrawi Arab Democratic Republic in Dili, and the President renewed Timor-Leste’s strong commitment to support the struggle of the Saharawi.

Timor-Leste strongly advocates finding a peaceful solution through a referendum.

Having a Saharawi Embassy in Dili shows our strong commitment to support the right to self-determination of the people of Western Sahara. The Western Sahara Embassy in Dili enjoys full support of the Government of Timor-Leste.

Timor-Leste took 24 years to arrive in its destination. Today, we are an independent State but we didn’t fight alone, we fought with friends, many of them are in this room. We even thought that Timor-Leste could have taken more years to get its freedom and, at that time, we were ready to pursue our long journey no matter how long it was going to take. For the people of Western Sahara, it is worth fighting for freedom and I am convinced that you will get your independence and that justice and peace shall prevail in your country. What is more important is never give up and keep on fighting.

I am not an expert on the colonization process of countries. However, in our experience, Portugal played a crucial role as an administering power of the territory until we found a peaceful and acceptable solution to the Timorese cause. I urge nations to support and take part in the Saharawi’s fight for its independence. Like many other sovereign countries, the people of western of Western Sahara deserve to have freedom.

Excellencies,

To conclude, I recall UN High Commissioner for Human Rights Zeid Ra’ad Al Hussein’s statement at the opening of this Human Rights Council session, where he mentioned that “the denial of human rights in one country concerns every State in the Organization”. And I state that the denial of the right of self-determination of the people of Western Sahara is a denial of a core principle of human rights.

Thank you.

**SIDE EVENT: 07 JUNE 2017**

**ON THE IMPLEMENTATION OF UNGA RESOLUTION 1514**

**IN WESTERN SAHARA**

**HER EXCELLENCY**

**NOZIPHO MXAKATO-DISEKO**

**AMBASSADOR AND PERMANENT REPRESENTATIVE OF SOUTH AFRICA**

Honourable Chair of this distinguished Panel,

Excellencies,

Ladies and gentlemen.

The Declaration on the Granting of Independence to Colonial Countries and Peoples, known by its short title as Resolution 1514, was adopted by the General Assembly on 14 December 1960. Adoption of this resolution would not have been possible in the absence of the working majority that emerged gradually between 1955 and 1960 in favour of an anti-colonialist measure. This majority coalition would become known as the Non-Aligned Movement, and it was this formation that provided the intellectual cohesiveness and political-tactical competence that secured adoption of Resolution 1514.

The persuasiveness of Resolution 1514 lies in the fact that it interprets the Charter of the United Nations in such a manner that it amplifies and even extends the Charter’s imperatives to include the struggle of peoples subjected to colonialism, and their desire for self-determination and full sovereignty in the community of nations.

In its substantive law stipulations, the Declaration makes four important points that together serve as ordering principles of international law:

* Article 1 states that “the subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights”.
* Article 2 states that “all peoples have the right to self-determination … that … necessarily includes the right freely to determine their political status and freely to pursue their economic, social and cultural development”.
* Article 4 states that “all armed action or repressive measures of all kinds directed against dependent peoples shall cease”.
* Article 5 states that “immediate steps shall be taken, in United Nations Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the people of those territories”.

We need to be clear that the manner in which this Declaration has informed the work of the General Assembly and International Court of Justice has made it *jus cogens*, a peremptory norm in international law and hence binding on the UN as a whole. The Declaration informed, among others, the 1971 advisory opinion of the International Court of Justice on the continued presence of South Africa in Namibia; the 1975 advisory opinion on Western Sahara; and the 1986 ruling on military and paramilitary support being provided at the time to forces seeking to overthrow the elected government of Nicaragua.

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Chairperson,

The Declaration is of particular importance to my own country because it informed three resolutions of the General Assembly that provided the South African liberation movements with safeguards in their efforts to end *apartheid* and bring about a free and democratic South Africa. These were Resolution 42/159 of 7 December 1987, Resolution 44/29 of 4 December 1989, and Resolution 46/51 of 9 December 1991, all of which reaffirm “the inalienable right to self-determination and independence of all peoples under colonial and racist regimes and other forms of alien domination, and upholding the legitimacy of their struggle, in particular the struggle of national liberation movements”.

Against the background of the liberation struggle of the people of South Africa, it is for us a cause for deep concern that the call contained in the Declaration for “the inalienable right of all peoples to complete freedom, the exercise of their sovereignty and the integrity of their national territory” is continuously and flagrantly violated in the cases of the Palestinian and Sahrawi people, with no end in sight to their subjugation, oppression and collective suffering. In both cases, the occupying power has entrenched itself by way of overt and even nefarious means in an attempt to sabotage the struggle of these peoples for self-determination. The tragedy of our time is that these efforts are aided and abetted by the collaboration of other countries; by wilful ignorance and the turning of a blind eye by those who should know better; and by the unfortunate manipulation of multilateral bodies to detract from these struggles.

Chairperson,

South Africa is familiar with these strategies and tactics. Our liberation movements confronted them for decades in a protracted and difficult struggle to achieve our freedom. It may be of some value for us to dwell a little on the characteristics of these strategies and tactics:

* At the **multilateral level**, the occupying power seeks to deflect attention away from the liberation struggle of the subject peoples. This takes a variety of forms that include placing individuals in the bureaucracy to gate-keep the issue, prevent it gaining traction, and dilute efforts to prioritise it. This is accompanied by campaigns to be elected onto committees and special procedures so as to keep the liberation struggle off the agenda and submerge it under a plethora of other issues. The occupying power also deploys supporters to disrupt efforts to raise the profile of the liberation struggle among member states.
* At the **bilateral level**, the occupying power cultivates relationships with sympathetic countries that are prompted to act as its proxy in opposing the liberation struggle. In many cases, these relationships are blatantly rent-seeking in nature, with multinational corporations from the sympathetic country extracting the natural resources from the non-self-governing territory and trading in them, or by the opportunistic use of so-called “dollar diplomacy” in the form of soft loans, bridging finance, investment and budgetary support for countries in need. This demonstrates blatant disregard of legal judgments such as the ruling of the European Court of Justice of 21 December 2016.
* It is, however, in the **non-self-governing territory** itself that the occupying power institutionalises the oppression and subjugation of the colonized people. In order to thoroughly delegitimize the liberation struggle, the territory is balkanised to ensure control; freedom of movement is proscribed; surveillance of activists and freedom fighters is pervasive; access to information is controlled; law enforcement is abusive, heavy-handed and attaches no importance to the human rights of the victims; and detention without trial, torture to extract confessions and intimidation of freedom fighters take place. An effort is made to divide the subject population by co-opting elements sympathetic to the occupying power so as to create an opposing political narrative, dilute the liberation discourse and create an impression of fragility and a lack of direction. And civil society movements are set up and sponsored to agitate and advocate against the oppressed people.

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Chairperson,

Notwithstanding the challenges we face in ensuring the full implementation of the Declaration, there are encouraging signs that light our way. We are heartened by the interest shown by many states in the struggle of the Sahrawi people for self-determination, and by their thoughtful statements to the Human Rights Council in this regard. We welcome the interaction between the Geneva Support Group and the High Commissioner for Human Rights on Western Sahara, and look forward in anticipation to it bearing fruit. We welcome the renewal of the mandate of MINURSO by the Security Council on 29 April 2017 for another year. We are encouraged by the commitment of the Secretary-General, Mr Guterres, in his report on Western Sahara of 10 April 2017, to breathe new life into the process of ensuring self-determination for the Sahrawi people. And we look forward to collaborating with his new Special Envoy to give effect to the obligations of the international community to the Sahrawi people.

In conclusion, South Africa remains firmly committed to the liberation struggle of the Sahrawi people, and to the realisation of their right to self-determination. We align ourselves unequivocally with the statement in Resolution 1514 that “the peoples of the world ardently desire the end of colonialism in all its manifestations”. And we continue to draw our inspiration from the words of Nelson Mandela, which are poignant and relevant to the Sahrawi people today: “I knew as well as I knew anything that the oppressor must be liberated just as surely as the oppressed. A man who takes away another man’s freedom is a prisoner of hatred, he is locked behind the bars of prejudice and narrow-mindedness. I am not truly free if I am taking away someone else’s freedom, just as surely as I am not free when my freedom is taken from me. The oppressed and oppressor alike are robbed of their humanity”.

Let us therefore continue to work, Chairperson, in the spirit of the Declaration on the Granting of Independence to Colonial Countries and Peoples, to free the Sahrawi people from their subjugation and give them their right to self-determination.

I thank you.

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**Sahrawi Arab Democratic Republic**

**H.E. Mr. Mohamed Sidati**

**Minister for Europe – Ministry of Foreign Affairs**

Dear Pierre Galand,

We share many souvenirs and wish to tell you our gratitude as a Sahrawi people, when from the beginning we had your support and of course I have great pleasure to see you chairing this side-event.

I would like also to thank the members of the Geneva Support Group for Western Sahara (GSGWS), and tell them our recognition; our gratitude and we think that keeping this momentum of meetings here within the human rights Council is important to get some awareness about the crisis of the Sahrawi people.

Thanks to the panellists, to Ambassador, Permanent Representative of Namibia, Madame Sabine Böhlke-Möller, for her commitment as a friend of the Sahrawi people and Ambassador Da Silva of Timor Leste. I have beside me, Ambassador of South Africa, and we all have been impressed by her speech. Thanks to Professor Kohen from the Geneva Graduate Institute. I also greet another panellist K. Hadja Embareka. I would like to greet Western Sahara human rights defenders who are today with us and thank them for their endeavour.

Thanks to M. Fattorini who is doing a great job for Western Sahara. Thanks to all participants for their endeavour and efforts and we express our deep gratitude.

We met on the occasion of this HR Council session to have some exchanges and debate about Western Sahara, as Pierre Galand said it, in relation with the General Assembly Resolution 1514 and its implementation granting the right for self-determination and protecting the right for self-determination. For Sahrawi people the UN resolution of 14th December 1960 is very, very important, very famous resolution, by which the world recognised the right of colonial people to be free, to be emancipated. It was the beginning of the end of the colonialism era.

- 2 -

We all know the suffering, and the price paid by our peoples in order to achieve their goals for freedom, peace and justice. We greet the spirit, the strength of the resistance of our peoples against domination, oppression, cultural and economic destruction in Africa, Latin America and Asia. National liberation movements share a lot of similarities in Africa, Latin America and Asia and the struggle for national liberation made it possible: freedom, independence for many African countries. We feel happy that Africa is free, Africa is independent. Important achievements, but unfortunately we feel sad and frustrated because we still have a colony in Africa, in our continent, yes, the last colony which is Western Sahara. It is a Non Self-Governing Territory and a colonized country. When the members of UNGA discussed the Western Sahara issue, they asked the administering power at that time, Spain, to consider Western Sahara as a separate and distinct territory from Spain and affirmed that the Sahrawi people have the right to exercise their right to self-determination in accordance with the UN Charter and UNGA Resolution 1514.

The UN considers WS as colonized territory, and therefore it falls under the competence of UNGA which means a question of decolonisation, a colonial case, even when Spain decided to abandon Western Sahara and Morocco invaded it, using violence, force and abuses.

In adopting Resolution 229 in 1966, the UN recognised the indigenous people of Western Sahara. Much more, The UN recognised that the people of Western Sahara have the right to self-determination and all the UN resolutions continuously reiterated this right which is an inalienable right. This inalienable right should be exercised through a genuine, fair, impartial and democratic referendum without any constraints. It is very important to implement this right. But we all know that Morocco blocked this free and independent process. The people of Western Sahara have the right to be independent and according to the International Court of Justice, there is no link of sovereignty over Western Sahara with neither Morocco, nor Mauritania. It is clear that the people of Western Sahara have the right to be free and independent.

It should be clear that if when Spain remains historically the administrative power of Western Sahara, the Kingdom of Morocco has to be considered as a colonial power; it is an the occupying power of Western Sahara. The UN determined the parties in conflict: the National Liberation movement represented by the Polisario Front on one part and the Kingdom of Morocco on the other part. The international community continues to call for direct negotiations between the two parties in order to achieve a peaceful and lasting solution on the basis of self-determination.

We believe it is the responsibility of the international community, Europe, African Union and the UN to implement and protect the rights of the people of Western Sahara.

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Some recent developments took place, the UN Secretary General, M. Guterres, affirmed his commitment to act in order to implement the UN resolutions in Western Sahara and nominated his new Personal Envoy, Mr. Horst Köhler, former President of Germany. In April this year, the UN Security Council adopted resolution 2351 calling for an urgent new round of direct, serious negotiations, with the aim to achieve a peaceful and lasting solution which provides for the self-determination to the Sahrawi people. Yes, self-determination is the key word.

We hope that Morocco will abide by the UN resolution, that it will accept peaceful and lasting solution. We, as Sahrawi people, will continue our struggle. We believe that North Africa deserves peace and security and that the illegal Moroccan occupation of Western Sahara is feeding insecurity, terrorism, troubles, and preventing cooperation between our peoples.

Another recent element concerning this conflict is the European Union Court of Justice judgment adopted on 21st December 2016. The Court, recalling that Western Sahara is a distinct and separate Territory and that the Polisario Front is the sole legal representative of this Territory, ruled that any agreement between the European Union and the Kingdom of Morocco cannot apply to Western Sahara. It also ruled that for any agreement to be applicable to Western Sahara, its legal representative has to give his free, prior and informed consent.

Today, we observe some attempts from the European Commission, pushed by France and Spain, to go around the decision of the European Union Court and they are trying not to implement it. We consider this behaviour very dangerous and unacceptable. As I said, the Sahrawi people have the right to self-determination and to freely dispose of its natural wealth and resources. The Moroccan occupation and annexation is a serious breach of international law. Also the human rights situation is deteriorating. Morocco perpetuates HR violations that affect all areas: freedom of speech, expression, assembly, movements, right to fair trial, education, torture, attacks and harassments against the Sahrawi people.

Today we are witnessing an unfair trial, the Gdim Izik trial, by which Morocco is trying to intimidate the Sahrawi people and continues with this tragic comedy. Morocco is demonstrating once again that it is an occupying power that does not respect any human rights in Western Sahara. The detainees rejected the conditions in which the trial is taking place and Morocco continues violate the very fundamental rights of the Sahrawi people. We call on Morocco to free all political prisoners. The Sahrawi people will continue its struggle for freedom, peace and justice until the achievement of these objectives.

Again many thanks.

**35th Human Rights Council**

**Side-event on**

**Implementation of UNGA Res. 1514 in Western Sahara**

**Prof. Marcelo Kohen**

**Geneva Graduate Institute of International Studies**

I would like to start with some brief remarks concerning the legal issues about the decolonization in general and the decolonization of Western Sahara in particular.

One of the major achievements of the United Nations, if not the major achievement, has been its contribution to the process of decolonization, by which the UN started with 50 members to reach in the seventies, 164 members. And this was due to the fact that many countries in Africa, in Asia, in the Caribbean and other regions in the world achieved their independence with the support of international law.

The prior speakers referred to the General Assembly resolution 1514, I would not insist on its importance and the fact that the International Court of Justice in 1971 already, 11 years after the adoption of that resolution, in its advisory opinion on Namibia recognized the customary law character of the principles enshrined in resolution 1514.

It’s also important to mention two other very important resolutions of the UN General Assembly which contributed to the development of what we can call the “law of decolonization”. And these resolutions are 1541 and 2625. The resolution 1541 established the conditions by which a Territory falls within Chapter XI of the Charter and consequently the law of decolonization. There was a time when Portugal considered that its colonies were just overseas provinces not colonies. This resolution together with resolution 2625 also established different manners by which Non Self-Governing Territories could be decolonized by independence, integration, free association and other forms of self-determination.

It is important to recall, I would say, four or five principle rules of the law of decolonization. One of these rules, which is a crucial one, is the fact that the colonized territory has a separate and distinct status the territory of the colonial power. This is mentioned in resolution 2625. The other fundamental element of the law of decolonization is that it’s not for the colonial power to determine which Territory is a self-governed territory or is not, it is for the General Assembly. The third very important principle of the law of decolonization is that it is also the UN General Assembly that determines the manner in which the Non Self-Governing Territory must be decolonized. And it’s also for the General Assembly to determine when a Territory has ceased to be a Non Self-Governing Territory.

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We also know that self-determination, which has been denied as a legal principle for many years on many cases by colonial powers, is today a universally recognized fundamental principle of international law. This was also one of the conclusions of the International Court of Justice Advisory opinion on Western Sahara of 1975 as well as in the contentious case between Portugal and Australia in the Lest Timor judgment of 1995 which recognized self-determination as *erga omnes* right.

With regard to Western Sahara, it is important to take in consideration all these elements and the clear applicability of the principle of self-determination. In its Advisory opinion of 2004 regarding the wall construction in the Palestinian occupied territories, the International Court of Justice also analyzed the principle of self-determination and mentioned something which is very important when applying the self-determination, it mentioned the fact that today is absolutely clear that there is a Palestinian people entitled to self-determination.

We know that there are different colonial situations; we know that resolution 1514 mentions both self-determination and respect of territorial integrity. We also know that not any human community is entitled to the right of external self-determination. There are number of conditions, and what is clear is that here, for Western Sahara, the international community, the General Assembly, the ICJ, any organ of the United Nations dealing with the question has recognized, including Morocco, the fact that self-determination is applicable to Western Sahara.

There is no doubt that there is a Western Saharawi people entitled to self-determination and when one says that there is a people entitled to self-determination it’s to that people to decide the fate of this territory. And here it’s so important to remember that when the UN General Assembly discussed the situation of the Spanish colonies in Africa it made a very important distinction: it treated two Spanish colonies in two different manners for the case of Ifni it considered that Ifni should be part of Morocco, in the case of Western Sahara, it considered that Western Sahara is a separate territory, it’s not Morocco territory and it’s to the people of Western Sahara to decide the fate of this territory. And this is the reason why it’s very important to make the distinction. Here we are talking about the applicability of the principle of self-determination to the territory of Western Sahara. We are not talking about a secessionist movement. There is no comparison between the situation in Western Sahara and secessionist movements that can exist in different regions of the world: in Europe, in Africa, in Asia or any other region. So, here it’s a question of self-determination.

And I would like to mention the Security Council involvement with regard to this issue. The Security Council established MINURSO, and what’s the role of MINURSO? My fear is that it’s a little bit forgotten that the role of MINURSO is the organization of the referendum in Western Sahara: that’s the role of MINURSO. Even the name of this UN operation makes a clear reference to the referendum for Western Sahara. The Security Council resolutions in 2007 refer to the political process. There are negotiations and I quote “in search of mutually acceptable political solution to the dispute which will provide for the self-determination for the people of Western Sahara”.

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Okay, there is a problem and I would be very happy if the parties reach an agreement, because we cannot forget the fact that we are talking about two fraternal peoples, the Saharawi people and the Moroccan people, they have many things in common and in the future I hope that there will be a large union among different peoples in the region with other countries in the region, but this is for the independent peoples to decide.

This political process which started following the Security Council resolutions on 2007 has lasted for many years, and the question here is that there must be negotiations, these negotiations must be conducted in good faith in order to reach an agreement because here we are not talking about a kind of a territorial dispute, this is not a border dispute, here we are talking about a people entitled to self-determination and a State that is controlling a territory without any legal justification.

The Security Council should not postpone the essential mandate of MINURSO which is the organization of the referendum, because negotiations cannot last forever because this is the manner by which the occupier continues to occupy a Territory without major problems. One cannot always say that he is negotiating. Negotiations should have as objective the organization of the referendum of self-determination. It is for the people of Western Sahara to decide whether they will be independent or if they prefer the autonomy, or other form of self-determination. It’s up to the people of Western Sahara to decide, negotiation cannot be an aim itself.

In conclusion, allow me just a political analysis, I also believe that there is a political urgency in putting an end to this situation by implementing the international law the right to self-determination of the Sahrawi people. The situation in the region is very dangerous, its instability, the presence of terrorist groups, the presence of criminal groups. The best manner to fight all these problems is putting an end to this situation of illegal occupation through the exercise by the Saharawi people of their right to self-determination.

Thank you.

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**Geneva - Palais des Nations – Wednesday 7th June 2017**

**Implementation of UNGA resolution 1514 (XXV)**

**and the MINURSO mandate in Western Sahara**

Madame Chair, Excellences, Ladies and Gentlemen,

First of all I wish to thank the members of the Geneva Support Group for Western Sahara for organizing this very important side-event and for inviting me to express the views of the Sahrawi National Commission for Human Rights on this fundamental matter.

The Sahrawi National Commission for Human Rights has been mandated by the Sahrawi Arab Democratic Republic to develop a culture of Human Rights among the Sahrawi people and to monitor, promote and protect the Human Rights in Western Sahara: West of the Berm, illegally occupied by the Kingdom of Morocco, as well as East of the Berm and the refugees’ camps near Tindouf.

Taking advantage of the quite extensive presentations on the political and juridical aspects made by the distinguished panellists who spoke before me, I will concentrate on the direct consequences of the non implementation of UNGA resolution 1514 on the daily life of the Sahrawi people: West and East of the Berm.

It is worth here to recall what the Mission dispatched to Western Sahara and the Refugees’ camps near Tindouf by the High-Commissioner for Human Rights in 2006 said in its conclusions. I quote “As has been stated in various UN fora, the right to self-determination for the people of Western Sahara must be ensured and implemented without any further delay. As underlined above, the delegation concludes that almost all human rights violations and concerns with regard to the people of Western Sahara, whether under the de facto authority of the Government of Morocco or of the Frente Polisario, stem from the non-implementation of this fundamental right.”

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More than fifty years after the UN General Assembly decided[[1]](#footnote-1) that the “Declaration on the granting of independence to colonial countries and peoples” should apply to the people of the Non Self-Governing Territory of Western Sahara, the majority of the Territory is under the illegal occupation of the Kingdom of Morocco that both, the UN General Assembly and the UN Security Council have condemned.

While the Security Council constantly calls upon the Kingdom of Morocco and the Polisario Front to resume negotiations without preconditions and in good faith, the Occupying Power openly declares that it considers the Occupied Territory already being part of its own territory and indeed, the Kingdom has already integrated this illegal assumption in the national legal framework. The most evident manifestation of this position is the presence of a number of parliamentarians in the Moroccan Parliament elected from the Non Self-Governing Territory of Western Sahara.

The direct consequence is that nobody can freely argue publicly about the legal status of Western Sahara, either in the Kingdom of Morocco or in the Non Self-Governing Territory, without being accused to attempt to the integrity of the territory of the Kingdom and being brought to justice in accordance with the newly adopted article 275 e) of the Moroccan Penal Code.

This means that Moroccan journalists and medias apply a strict self-censorship when dealing with the issue of Western Sahara; some internationally well known journalists have chosen to go into exile in Western countries.

Sahrawi Human Rights defenders and organisations are routinely victim of the repression of the Moroccan authorities. Harassment, arbitrary arrests and detention, torture are commonly experienced by those defending the right to self-determination and by the members of their families. Peaceful manifestations advocating for the inalienable right to self-determination and independence, often held by women, are systematically forbidden or violently dispersed.

The illegal integration of Western Sahara by the Moroccan authorities into the Kingdom’s legislation poses also a serious threat to the independence of the Moroccan judiciary institutions and to the independence of the lawyers. As the ongoing trial of the pacific demonstrators of Gdeim Izik in 2010 has recently showed, judges have to disregard the internationally recognized legal status of Western Sahara. Moroccan and Sahrawi lawyers have to avoid raising the issue if they do not want to be accused in their turn of undermining the territorial integrity of the Kingdom. That’s why the accused had to involve French lawyers to play their case.

The peaceful manifestation of Gdeim Izik held by thousands of Sahrawi intended to attract the international community’s attention on the dramatic conditions of the Sahrawi people on their own land. Indeed, as everybody knows, Western Sahara is the only Non Self-Governing Territory that has not an internationally recognized Administering power reporting annually to the General Assembly in accordance with article 73 of the UN Charter.

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From the economic perspective, the non implementation of UNGA resolution 1514 implies that the Kingdom of Morocco continues to illegally plunder the natural resources of the Sahrawi people without the free, prior and informed consent expressed by the only internationally recognized representative of the Territory: the Polisario Front[[2]](#footnote-2).

In this context, I have to express the Sahrawi National Commission for Human Rights’ deep concern about the European Union Commission’s attitude after the European Court of Justice decided[[3]](#footnote-3), on 21st December 2016, that the Association and the Liberalisation agreements between the EU and Morocco are not applicable to Western Sahara. We call upon all EU member States and the EU itself to comply with the Court’s judgment and to abide to EU and international law. We call upon in particular France, Spain, Germany, Belgium and Portugal to part with their ancient colonialist policies and to truly engage for the implementation of UNGA resolution 1514 in Western Sahara. Believe me, Sahrawi people deserve to enjoy their fundamental Human Rights as much as the European people!

The economic development of Western Sahara displayed by the Moroccan authorities was originally and is still today accompanied by a massive transfer of Moroccan population into the occupied part of the Non Self-Governing Territory: a practice that is formally forbidden by the Geneva Conventions.

In concrete terms, this economic development is not the result of the Sahrawi society decision and in fact the Sahrawi people does not benefit from it. On the contrary, almost all Sahrawi people are undereducated and underemployed.

The non implementation of UNGA resolution 1514 allows the Occupying power to perpetuate a policy of weakening of the Sahrawi educational system and to force Sahrawi youth aspiring to higher education to expatriate either to the Kingdom of Morocco or abroad.

There are two major economic sectors that the Occupying power has developed in Western Sahara: fishery and the phosphate extraction. Actually, all Sahrawi fishermen have lost their fishing licence which are been given to major Moroccan and foreign companies that are over exploiting the resources of the Sahrawi coasts. The phosphate industry is directly controlled by the King of Morocco’s companies which deal with foreign transnational companies. The Sahrawi people neither decided to develop these activities nor they benefit from such development, on the contrary, the repression exerted by the Kingdom of Morocco and the refusal to organize a free referendum in Western Sahara is directly linked to the economic and financial interests of the Royal family in the Non Self-Governing Territory.

This is one of the main reasons why the Occupying Power is constantly blocking the decolonization process in Western Sahara, perpetuating the separation of almost all Sahrawi families and dramatically affecting the traditional social structure of the Sahrawi people. The blockade of the decolonization process seriously affects the living conditions and the Human Rights of the over 150’000 Sahrawi refugees around Tindouf.

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In this context, the Sahrawi National Commission for Human Rights denounces the recent election of the Kingdom of Morocco, the only Occupying Power of a Non Self-Governing Territory, as Vice-president of the IV Commission of the UN General Assembly. We consider that this political decision is fundamentally contradicting the spirit of the UN Charter.

In conclusion, Madame Chair, Excellences, Ladies and Gentlemen,

The Sahrawi National Commission for Human Rights takes this opportunity to call upon the High-Commissioner for Human Rights:

* to resume the technical mission, at least East of the Berm and in the refugees’ camps around Tindouf and to report to the Human Rights Council on the human rights situation of the Sahrawi people;
* to implement a specific support programme for our Human Rights National Commission and the Sahrawi NGOs working on Human Rights in conformity with UNGA resolution on the “Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples” and with ECOSOC resolution on the “Support to Non-Self-Governing Territories by the specialized agencies and international institutions associated with the United Nations”.

I thank you for your attention.

*Concluding remarks by Mr. Pierre Galand (Former member of the Senate – Belgium)*

Je voudrais tout d’abord saluer la solidité des témoignages des intervenants, qu’il s’agisse de l’Afrique du Sud, de la Namibie, de Timor Leste et de la représentante de la Commission sahraouie des droits de l’homme.

Je m’en voudrais de parler des campements sans préciser d’avoir visité ces campements à plusieurs reprises et dire combien un peuple qui vit réfugié est un peuple qui est en grande souffrance, c’est un peuple qui est privé de tous ses droits et c’est aussi une manière de faire de l’apartheid, c’est une façon de pratiquer le crime d’apartheid que d’empêcher un peuple de pouvoir jouir de l'ensemble de ses droits.

Heureusement, ils ont été accueillis dans une région, certes difficile, saharienne, mais accueillis par un autre peuple, le peuple algérien. Et je suis toujours très ému lorsque je me rends dans les territoires sahraouis de rencontrer ce peuple algérien qui est dans la foi absolue dans la manière dont va se conclure ce conflit. Et je tiens à dire en présence de l’Ambassadeur d’Algérie mon admiration pour ce peuple qui est toujours, au jour le jour, aux côtés du peuple sahraoui. Lorsque  le PAM, le HCR ou l’Union européenne viennent à tarder dans l’application de leurs obligations vis à vis des réfugiés, il s’agit de réfugiés ayant tous les droits qui sont prévus par la communauté internationale pour la protection des réfugiés et de leur venir en aide , chaque fois qu’il y a un manquement : c’est l’Algérie qui est là. Il faut le savoir et je pense qu’il est important de le dire quand on est dans des réunions comme celle-ci, et je voudrais le dire à titre tout à fait personnel aussi.

Je voudrais aussi dire qu’il est vrai qu’il y a des memos qui ont été adressés par des pays à la Cour européenne de justice, sous pression du Maroc. Par exemple, le memo adressé par la Belgique plaide pour une solution conforme au droit international, à l’intermédiation de l’ONU et à l’autodétermination, là sous la pression du Maroc ils ont complètement raté le rendez-vous. Le document existe, il est à la Cour. Et au Portugal, entre temps ils ont changé de gouvernement, ils n’ont pas envoyé de memo.

Il faut savoir aussi qu’il y a des évolutions. Par exemple, au jour d’aujourd’hui plusieurs parlements en Europe ont pris des décisions de se conformer directement à la décision de la Cour de Luxembourg, ce sont des parlements régionaux en Espagne, au Nord de l’Europe, et le Parlement des Flandres en Belgique qui ont déjà pris des initiatives y compris alerter l’ensemble des exportateurs de leur pays à respecter la décision de la Cour pour éviter d’être en violation avec le droits international. Donc c’est intéressant de voir comment le droit et comment les résolutions des Nations Unies adoptées à New York ou ici à Genève par le Conseil des droits de l’homme, comment ce corpus est une façon de mettre en œuvre le droit des peuples à disposer d’eux-mêmes. Et je remercie le groupe de soutien ici à Genève qui nous apporte à cet égard une magnifique contribution, je crois que c’est vraiment essentiel, et je plaide aussi pour que nous puissions ensemble savoir comment, dans l'échange de nos bonnes pratiques, nous pouvons faire progresser cette cause tellement importante pour le peuple sahraoui, tellement importante pour les peuples de la région, tellement importante pour la sauvegarde de ce que certains ont appelée la deuxième charte fondamentale des Nations unies, cette résolution 1514. Et n’oublions pas que l’année prochaine marquera le 70ème anniversaire de la Déclaration universelle des droits de l’homme et que cette déclaration est une sorte de colonne vertébrale qui permet de faire progresser la coexistence pacifique entre tous les peuples.

Merci.

*Remarks from the floor*

*S.E. Amb. Boudjemâa Delmi – Représentant permanent de l’Algérie*

Je vous remercie vivement, Monsieur le modérateur, de votre soutien et je remercie également les panelistes qui ont fait d’excellents exposés.

A travers justement ces exposés, ces expériences qui ont été vécues par l’Afrique du sud, par la Namibie, et à travers aussi de l’exposé que vient d’être fait par le Professeur Kohen, il est clair que le peuple sahraoui est éligible à l’exercice de son droit à l’autodétermination, ça c’est un fait qui a été affirmé au plan du droit et au plan des expériences vécues. Ce qui pose problème, et tout le monde l’a constaté, c’est l’absence de volonté politique pour le règlement de ce conflit de la part d’une partie au conflit, en l'occurrence le Maroc, qui se met, depuis des années, dans la position de vouloir tout le temps gagner du temps, créer des problèmes, des problèmes artificiels, des petits problèmes, pour noyer la question fondamentale qui est celle de l’autodétermination.

Cette absence de volonté politique est malheureusement doublée d’une absence d’une volonté politique de la communauté internationale, et je vais me référer précisément au Conseil de Sécurité. Il y a une responsabilité qui est malheureusement mal prise en charge par le Conseil de sécurité. Et la question que se pose maintenant à l’ensemble des peuples qui militent en faveur de la mise en œuvre de ce droit à l’autodétermination du peuple sahraoui, est comment faire pour que le Conseil de sécurité assume la responsabilité qui est la sienne, comment faire pour que cette responsabilité soit engagée, et comment faire pour que certains membres du Conseil qui s’opposent( ils sont connus, on les a nommés, ils se reconnaissent eux-mêmes : la France et l’Espagne), qui s’opposent tout le temps à toute évolution sur le concept d'autodétermination.

Tout le monde dit MINURSO, la lettre la plus importante pour nous dans MINURSO c’est le « R », c’est le Référendum : nous voulons qu’il y ait un référendum. Il appartient au peuple sahraoui de dire ce qu’il veut faire de son avenir. Il peut être sahraoui, il peut être marocain, il peut faire ce qu’il veut mais c’est au peuple sahraoui de décider.

Voilà pourquoi nous pensons qu’une fois que le droit à l’autodétermination est appliqué, nous allons régler tous les problèmes. Nous allons régler le problème de la violation des droits de l’homme au Sahara occidental, nous allons régler le problème d’exploitation des richesses de ce peuple, nous allons régler le problème du terrorisme dans la région, nous allons régler le problème du banditisme dans la région, et nous allons aussi régler le problème de la construction de l’Union magrébine. Si nous réglons le problème de l’autodétermination, nous allons régler tous ces problèmes.

Voilà pourquoi nous devons continuer à lutter pour que le Conseil de sécurité prenne ses responsabilités, et une responsabilité énorme qui consiste à rendre justice à un peuple.

Je vous remercie.

*H.E. Amb.Taonga Mushayavanhu – Permanent Representative of Zimbabwe*

I would also like to recognize Minister Sidati and the other panelists and thank them for their interventions which are quiet enlightening. I don’t have really a question but I want just to echo what the other colleagues have said, from the panel and from the floor, that as far as Zimbabwe is concerned and its support to Sahrawi people, the issue of Western Sahara is an issue of decolonization and that in fact the United Nations recognize that Western Sahara is a non-decolonized territory.

Accordingly, the people of Western Sahara should be given the opportunity to choose its own destiny by deciding its future by a referendum. And as Zimbabwe is concerned, the Polisario Front is recognized by the international community as the legitimate representative of the Sahrawi people. I think also that we need to keep the pressure on the United Nations Security Council.

And my last point is that now that Morocco is part of the African Union we hope that this country lives by the status of the AU which its heart is the recognition of the inherited borders from colonialism and as far as we are concerned we think that Morocco should live to its obligations as a member of the AU and allow the people of Western Sahara to exercise its right to self-determination.

Thank you.

*S.E. Amb. Apolinário J. Correia – Représentant permanent de l’Angola*

Je voudrais, tout d’abord remercier les panélistes pour nous avoir donné un aperçu de la situation au Sahara occidental. Je voudrais dire, ce que tout le monde sait, et Monsieur le Ministre que j’avais le plaisir de le croiser à plusieurs reprises peut le confirmer : depuis son indépendance l’Angola a eu dans son agenda la libération de tous les peuples qui sont encore sous la domination coloniale. Comme vous le savez, l’Angola a payé cher, très cher, le prix de son indépendance et les conséquences sont encore visibles aujourd’hui.

Ce que je voudrais ajouter à ce que les éminents orateurs viennent de dire c’est que le droit est du côté du peuple sahraoui, et la raison est du côté du peuple sahraoui, et que tôt ou tard, le Sahara occidental sera indépendant. Professeur Kohen a bien dit que notre détermination a amené le Portugal à changer plusieurs fois de position : on était des colonies, après des territoires d’outre-mer et après on passé à des Etats.

Nous devons être mobilisés, le peuple sahraoui doit se servir du droit qui est de son côté et continuer sa lutte, et nous, comme la communauté internationale, nous sommes appelés à renforcer notre soutien à ce peuple, parce que l’indépendance ne se donne pas, elle s’arrache, et je crois que le peuple sahraoui doit arracher son indépendance... Et l’Angola est à ses côtés.

Je vous remercie.

1. UNGA resolution 1956 (XVIII) – 11 December 1963 [↑](#footnote-ref-1)
2. UNGA resolution 34/37 [↑](#footnote-ref-2)
3. http://curia.europa.eu/juris/document/document.jsf;jsessionid=9ea7d2dc30d5a57b201e09f24856b7bad0b327fbe322.e34KaxiLc3qMb40Rch0SaxyKbx10?text=&docid=186489&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=6228781 [↑](#footnote-ref-3)