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 36th session of the UN Human Rights Council to**

**a side-event on**

**Implementation of UNGA resolution 71/103\***

**in Western Sahara**

**Tuesday 12th September 2017 – 1:00 to 3:00 PM – Room XXIV**

**Panelists:**

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

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

***H.E. Amb. Sidi Mohamed Omar –****Sahrawi Arab Democratic Republic*

***Me. Gilles Devers –*** *Lawyer, legal representative of the Polisario Front before the CJEU*

***Mr. Erik Hagen –*** *Western Sahara Resource Watch*

***Mrs. Cheija Abdalahe Moh Ahmed –*** *Sahrawi National Commission for Human Rights*

***Moderator:***

***Miss Catherine Constantinides –*** *International Climate and Human Rights Activist – Specialising on Western Sahara (South Africa)*

***Oriental buffet will be served before the meeting***

***English / French interpretation***

*\* UNGA resolution 71/103 “Economic and other activities which affect the interests of the peoples of the Non-Self-Governing Territories”*

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 36ème session du Conseil des droits de l’Homme**

**à un side-event**

**Application de la résolution 71/103\***

**de l’Assemblée générale au Sahara occidental**

**Mardi 12 Septembre 2017 – 13:00 to 15:00– Salle XXIV**

**Intervenants:**

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

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

***S.E. Amb. Sidi Mohamed Omar –****République Arabe Sahraoui Démocratique*

***Me. Gilles Devers –*** *Avocat, représentant légal du Front Polisario devant la CJUE*

***Mr. Erik Hagen –*** *Western Sahara Resource Watch*

***Mme******Cheija Abdalahe Moh Ahmed –*** *Commission Nationale Sahraouie pour les Droits de l‘Homme (CONASADH)*

***Modérateur:***

***Mlle. Catherine Constantinides –*** *Défenseur des Droits de l’Homme et du Climat / Spécialiste du Sahara occidental (Afrique du Sud)*

***Un buffet oriental sera servi avant l’évenement***

***Interprétation français / anglais***

*\* Résolution 71/103 de l’Assemblée générale “Activités économiques et autres préjudiciables aux intérêts des peuples des territoires non autonomes”*



**OPENING REMARKS BY H.E. SABINE BöHLKE-MöLLER**

**PERMANENT REPRESENTATIVE OF NAMIBIA**

**AT THE SIDE EVENT**

**IMPLEMENTATION OF UNGA RESOLUTION 71/103 IN WESTERN SAHARA**

**GENEVA SUPPORT GROUP FOR WESTERN SAHARA, 12 SEPTEMBER 2017**

**Your Excellencies,**

**Distinguished panelists,**

Distinguished delegates,

Ladies and gentlemen,

I would like to welcome you to this event organized by the Geneva Support Group for Western Sahara,

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) as well as the American Association of Jurists (AAJ) and the Representative of Polisario Front in Geneva. We aim to consolidate support for the people of Western Sahara in the spheres of Human Rights and humanitarian issues.

Today’s side event focuses on the implementation of UNGA Resolution 71/103, which concerns “Economic and other activities which affect the interests of the peoples of the Non-Self Governing Territories”.

In the Resolution, the UNGA among others, *Reaffirms* the right of the peoples of the Non-Self-Governing Territories to self-determination in conformity with the Charter of the United Nations and with General Assembly resolution 1514 (XV), containing the Declaration on the Granting of Independence to Colonial Countries and Peoples, and with other relevant resolutions of the United Nations, as well as their right to the enjoyment of their natural resources and their right to dispose of those resources in their best interest.

Western Sahara is Africa’s “last colony.” Morocco hasnot been appointed as the administering power of Western Sahara by the UN. Both the UN and International Court of Justice (ICJ) categorize Western Sahara as a “Non-Self-Governing Territory with the right to self-determination regarding its political status”. In October 2015, the UN Committee on Economic Social and Cultural Rights called on Morocco to respect the principle of prior, free and informed consent of the Saharawi people with regard to resource-related activities in Western Sahara. Is this happening?

I am pleased that for our third side event we are joined by economists, human rights activists and experts, who with their vast experience and insight will, no doubt, enrich this discussion. I would also like to thank you, the audience for coming. With these few welcoming words I would like to hand over to the moderator.

I thank you.

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**Side-event at the 36th session of the HRC**

**Implementation of UNGA Res. 71/103 in the NSGT of Western Sahara**

**Statement delivered by H.E. Mr. Marciano da Silva**

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

Excellencies,

Distinguished colleagues,

Ladies and Gentlemen,

It is great honours for me to, once again, speak before you as one of the panellists in this important and timely side-event supporting our brothers and sisters of Western Sahara.

Today, we focus our attention on the UNGA Res. 71/103 “Economic and other activities which affect the interests of the Non-Self-Governing Territories”, adopted on 6 December 2016.

Dear colleagues,

I had the opportunity to share with you, throughout the previous side-events, the similarities between Timor-Leste and Western Sahara’s struggle for independence. We, too, saw our natural resources being exploited by other Governments. On 11 December 1989, Australia and Indonesia signed the Timor Gap Treaty, providing for the joint exploitation of petroleum resources, when Timor-Leste was still under Indonesian occupation.

I am happy to share that, on 30 August this year, my country and Australia reached an agreement on the central elements of maritime boundary delimitation in the Timor Sea, marking a significant milestone and the beginning of a new era in Timor-Leste’s friendship with Australia.

With the assistance of a Conciliation Commission under the auspices of the Permanent Court of Arbitration, we managed to achieve an agreement which supports the national interest of our two nations.

I share this as an encouragement to both Western Sahara and Morocco, wishing the two of them can find an acceptable solution to the conflict.

- 2 -

Like us in Timor, today, we have excellent relations with both Australia and Indonesia.

Bearing in mind, in addition, the decision of December 2016, of the Court of Justice of the European Union, that the Association and Liberalisation Agreements concluded between the EU and Morocco are not applicable to Western Sahara, the international community can no longer ignore the demand of the Sahrawi people: **to exercise their right to self-determination through a referendum.**

I would like to make a reference to the UN Secretary-General António Guterres’s proposal to a new diplomatic push to end the dispute over Western Sahara. As mentioned by the UN Secretary-General, the international community needs to re-launch the negotiation with a new dynamic and new spirit aiming at reaching a mutually acceptable political solution.

The Geneva Support Group should use this message as an opportunity to push the peace process to settle the conflict. To do this, we must not lose focus of our main objective, which is the long awaited political settlement of the problem.

Today our focus is on the violation of the economic and social rights, however, based on my country’s experiences, as long as we do not solve the political problem, it will be challenging for the Western Sahara to solve other issues as these will be addressed as a question of sovereignty. This is why I should like to appeal to all of us in this room, Governments, UN Bodies, NGOs, to concentrate our focus on the political solution of the conflict. We have the moral obligation to assist our brothers and sisters in finding the path towards their independence.

Timor-Leste reiterates its support for the struggle for self-determination and joins other countries expressing its condemnation of the illegal exploitation of natural resources of the Western Sahara.

I thank you all for your attention.

**SPEECH BY HER EXCELLENCY NOZIPHO MXAKATO-DISEKO**

**AMBASSADOR AND PERMANENT REPRESENTATIVE OF SOUTH AFRICA**

**AT THE SIDE-EVENT ON**

**IMPLEMENTATION OF UNGA RESOLUTION 71/103 IN WESTERN SAHARA**

**Geneva (Palais des Nations) – 12 September 2017**

Honourable Moderator of this distinguished panel,

Excellencies,

Ladies and gentlemen,

My point of departure today, and indeed the theme of this side-event, is General Assembly Resolution 71/103 and its relevance to Western Sahara, specifically the exploitation of this Non-Self-Governing Territory by the occupying power and its economic proxies. Resolution 71/103 adopted on 23 December 2016 states unambiguously that “any economic or other activity that has a negative impact on the interests of the peoples of the Non-Self-Governing Territories and on the exercise of their right to self-determination … is contrary to the purposes and principles of the Charter” of the United Nations.

I wish to frame my presentation today with reference to three matters. The **first** is the Constitutive Act of the African Union with regard to the issue of self-determination. This is a principle that binds all members of the AU without exception, and which we are obliged to fulfil. **Secondly**, the communiqué of the Peace and Security Council of the African Union of 21 March 2017 urges the UN Security Council to address the “illegal exploration and exploitation” of Western Sahara’s natural resources, and urging the occupying power “not to enter into contracts for the exploration and exploitation of Western Sahara’s natural resources”. **Thirdly**, the 37th Summit of the Southern African Development Community held on 19 and 20 August 2017 in Pretoria expressed concern “that colonialism on the continent is yet to be eradicated”, and approved the “convening of a SADC Solidarity Conference with Western Sahara, with the outcomes to be shared with the African Union Commission”.

Honourable Moderator,

I wish to be clear that I use the term “occupying power” advisedly. The UN has never appointed an Administering Power for Western Sahara. The territory is, in theory at least, under the protection of the UN. Western Sahara is therefore under illegal occupation in international law. We need to be clear on these matters.

I turn now to the main subject of my presentation.

It is a matter of considerable pride to South Africa that on 15 June 2017 the Eastern Cape Local Division of the High Court of South Africa delivered a precedent-setting judgement. This comes in the wake of the judgement of the European Court of Justice of 21 December 2016 stating that “Western Sahara has a separate and distinct status in relation to that of any State, including the Kingdom of Morocco”.

At question in the South African court case was a cargo of phosphate from Western Sahara that had been mined in the Boucraa mine by a Moroccan company, and was en route to New Zealand aboard the vessel *NM Cherry Blossom*. After the vessel docked at Coega on the outskirts of Port Elizabeth, the Sahrawi Arab Democratic Republic and Polisario Front brought an application to interdict the cargo. This was duly granted. The Acting Judge President of South Africa then constituted a full bench to hear the matter.

- 2 -

In outlining **the parties and the issues**, the High Court of South Africa referenced Article 17 of the SADR Constitution, which holds that public property belongs to the Sahrawi people, including “the mineral wealth, energy resources, underground wealth, territorial waters and other resources defined by the law”. The Court further referenced the 1975 judgement of the International Court of Justice which stated that Morocco and Mauritania did not have territorial sovereignty over Western Sahara. It also referred to the 21 December 2016 judgement of the European Court of Justice. The South African Court therefore firmly situated its judgement within the existing *corpus* of international law and court judgements pertaining to the status of Western Sahara.

Turning to the **ownership and exploitation of natural resources**, the High Court noted General Assembly Resolutions 1514 and 1803, particularly Article 7 of the latter, which states that “violation of the rights of peoples and nations to sovereignty over their natural wealth and resources is contrary to the spirit and principles of the Charter of the United Nations, and hinders the development of international cooperation and the maintenance of peace”. The High Court then stated that the phosphate on board the *NM Cherry Blossom* had not been mined with the consent of the Sahrawi people, and that “those who may benefit from the mining of phosphate are not the ‘people of the territory’ but, more likely, Moroccan settlers”.

In examining whether the **requirements of an interim interdict [had] been established**, the High Court found that “sovereignty over the cargo of phosphate is vested in the people of Western Sahara. In other words, the people of Western Sahara own the cargo”. The Court upheld the argument made by the applicants that “the phosphate was exploited without consultation with the people of Western Sahara, without their consent and that they do not and will not benefit from its exploitation”.

The High Court then turned to the question of **jurisdiction**, in other words whether a South African court could even hear the case. It pointed out that “in terms of Section 232 of the Constitution, customary international law is automatically incorporated into South Africa law”, noting further that “when interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law”. The Court proceeded to find that the occupying power was not a party to the proceedings and had no proprietary interest in the matter; hence any claim to state immunity could not be upheld.

The Court’s **conclusion** was as follows:

* That the cargo of phosphate be interdicted and the respondents restrained from removing it from the port.
* That the vessel’s registration documents and trading certificates be removed.
* That in the event that the applicants obtain a final order for delivery and/or possession of the cargo, the guarantor shall pay the applicants the market value of the cargo.
* That leave is given to the applicants to sue the respondents for delivery of the cargo and further relief.

Honourable Moderator,

This landmark judgement has profound and far-reaching implications. For the first time a South African court, no less the High Court, has delivered a judgement that creates legal precedent in terms of resources illegally extracted from Western Sahara and passing through South African territorial waters. Where court applications are made in future, such cargoes will be interdicted. The South African judicial system has breathed life into General Assembly Resolutions 1514, 1803 and 71/103 and sent a clear message to South African and foreign companies that the illegal exploitation of the resources of Western Sahara now has serious consequences in South African law.

- 3 -

Secondly, by situating its judgement within the *corpus* of international law constituted by the Advisory Opinion of the ICJ of 1975 and the 2016 verdict of the ECJ, among others, the High Court has firmly aligned South African jurisprudence with the international legal position on Western Sahara, namely that sovereignty over the natural resources of the territory is vested in the Sahrawi people, not the occupying power or its economic agents and proxies.

Thirdly, the judgement of the High Court reaffirmed the right of the Sahrawi people to self-determination in line with the UN Charter and numerous General Assembly resolutions, stating that the occupying power has no legitimate claim to sovereignty over Western Sahara.

Against this background, my government is clear in its position that Western Sahara is and has for over 40 years been under the yoke of an illegal foreign occupation. The plundering and exploitation of the resources of Western Sahara is illegal under international law. This plundering prolongs the subjugation of the Sahrawi people, retards their development, and compromises their ability to exercise their right to self-determination. This exploitation takes place without the free, prior and informed consent of the Sahrawi people, given that the Polisario Front, which General Assembly Resolution 34/37 of 1979 recognises as the representative of the Sahrawi people, has no say over the territory’s natural resources. This too is illegal and unacceptable.

South Africa therefore calls on all member states of the United Nations, as outlined in Resolution 71/103, to put an end to economic activities by their nationals and business enterprises that are detrimental to the interests of the inhabitants of the Non-Self-Governing Territories, and to respect and safeguard the permanent sovereignty of these peoples over their natural resources.

It remains our firm belief that Western Sahara will be free in our lifetimes, and the blight of colonialism removed from the face of the African continent once and for all.

I thank you.



**Implementation of UNGA resolution 71/103 in Western Sahara**

**Geneva, 12 September 2017**

**H.E. Ambassador Sidi M. Omar**

**The Socioeconomic and Political Consequences of Morocco’s Exploitation**

**of the Natural Resources of Western Sahara**

The natural resources of the Non-Self-Governing Territory of Western Sahara have always been at the core of the longstanding conflict with Morocco. They were not only one of the main reasons that drove Morocco to invade and annex Western Sahara in 1975, but they also have become an instrument whereby Morocco has been trying to legitimise its occupation and illegal annexation of the Territory.

The preceding speakers have underscored the legal status of Western Sahara as a Non-Self-Governing Territory pending decolonisation, whose people have an inalienable right to self-determination and permanent sovereignty over their natural resources in line with resolution 1514 (XIX) of the UN General Assembly and other UN relevant resolutions. It bears repeating, however, to underline the implications of this status in terms of Morocco’s presence in Western Sahara and consequently its exploitation and marketing of the natural resources of the Territory.

As well known, consistent with its policy of not recognising as legal any territorial acquisition resulting from the use of force, the UN has never recognised the legality of Morocco’s annexation of Western Sahara. Moreover, the advisory opinion of the International Court of Justice of 1975 and the legal opinion of the UN Under-Secretary for Legal Affairs of 29 January 2002 affirm clearly that Morocco does not exercise any sovereignty or administration over Western Sahara. Therefore, Morocco is simply an occupying power of the Territory in line with General Assembly resolutions 34/37 of 21 November 1979 and 35/19 of 11 November 1980. This explains the fact that today there is no single country, regional or international organisation in the whole world, that recognises Morocco’s claims of sovereignty and occupation of Western Sahara. As an occupying power, Morocco therefore has no right to dispose of the natural resources of the Sahrawi people without their prior and express consent.

In this context, I will briefly outline the socio-economic and political consequences caused by the economic activities undertaken by Morocco over the past forty years in the occupied parts of Western Sahara. These activities not only affect adversely the interests of the Sahrawi people and their right to permanent sovereignty over their natural resources but they also represent a major obstacle to the realisation of their inalienable right to self-determination.

- 2 -

To begin with, I would like to address briefly the argument made by those who claim that, since the question of Western Sahara is now in the hands of the Security Council, the political process sponsored by the Council has overtaken or even overridden all other UN approaches related to this issue. It is true that the Security Council has been seized of the matter since 1990, primarily at the request of the UN Secretariat and the General Assembly. However, the status of Western Sahara as a Non-Self-Governing Territory is established and validated by the General Assembly through its Special Committee on Decolonisation. In line with the UN Charter and General Assembly resolutions (Res. 742 (VIII) of 1953 and 1514 and 1541 of 1960, among others), the General Assembly has exclusive competence to validate the application of the right to self-determination and to decide when a Non-Self-Governing Territory has exercised self-determination in an informed and democratic process.

Therefore, as long as the General Assembly has not validated the exercise by the Sahrawi people of their right to self-determination in the way described above, Western Sahara remains a Non-Self-Governing Territory with all the legal consequences derived from this particular status. It is worth noting that the condition of Western Sahara being both a Non-Self-Governing Territory and an occupying power is compatible with international law and practice. In the same sense, regardless of the position of the successive Spanish governments, Spain remains the *de jure* Administering Power of the Territory as was confirmed by *La Audiencia Nacional* (the Spanish National High Court) in its ruling of 4 July 2014 (para. 4). Spain therefore is still accountable to the UN and to the Sahrawi people for the fulfilment of its responsibilities and “sacred trust” obligations concerning the protection of the interests of the Sahrawi people and the decolonisation of the Territory in line with the provisions of Chapter XI of the UN Charter and General Assembly relevant resolutions.

As expected, the exploitation of the natural recourse of Western Sahara started shortly after the military invasion and subsequent annexation of parts of the Territory by Morocco in 1975. Following Spain’s withdrawal from Western Sahara, Morocco immediately began the exploitation of the phosphate of Bucraa mines, especially after the Moroccan OCP Group retained 65% of the Spanish company of Fos Bucraa, as agreed in the Madrid Accords of 14 November 1975. Since December 2002, the OCP Group has been controlling all the activities relating to the exploitation and marketing of Sahrawi phosphates. Sahrawi fishing grounds were also exploited from the first moment of the occupation of the Territory through fishing agreements signed between Morocco and third parties such as those concluded with the European Economic Community in the 1980s and 1990s. A recent example is the Fisheries Partnership Agreement between the European Community and the Kingdom of Morocco, which entered into force on 28 February 2007 and was later renewed in 2014 until 27 February 2018. Although the agreement allows European vessels to fish in what is called the Moroccan “fishing zone”, there are documented proofs that the EU-flagged vessels have illegally fished in waters adjacent to Western Sahara. In terms of oil and gas, since 2001, the Moroccan authorities have concluded contracts with a number of foreign companies to conduct offshore and onshore prospecting for oil and gas in the Sahrawi occupied territories. The Sahrawi agricultural products and even sand have also been exploited by Morocco with the complicity of local businesses and foreign companies.

There are many well-documented reports complied by both Sahrawi and international organisations detailing the massive exploitation of Sahrawi resources by Morocco and its adverse effects on the Sahrawi people living on both sides of the divided territory. I will cite just a few sources from the United Nations itself to demonstrate this point.

In its “concluding observations on the fourth periodic report of Morocco” dated 22 October 2015 (E/C.12/MAR/CO/4), which were reissued for technical reasons on 19 November 2015, the Committee on Economic, Social and Cultural Rights of the UN Economic and Social Council,underlines its concern that “the Saharawis’ right to participate in the use and exploitation of natural resources is still not respected”. The same concern was also raised by the Special Rapporteur on the right to food in the report (A/HRC/31/51/Add.2) on her visit to Morocco and Dakhla, in Western Sahara, dated 12 February 2016.

- 3 -

Furthermore, in the advance copy (para. 72) of his report on the situation concerning Western Sahara submitted for the information of the members of the Security Council on 18 April 2016, the UN Secretary-General indicated that “the Special Rapporteur on the right to food, visiting Dakhla in October 2015, echoed some of the CESCR’s recommendations, highlighting that poverty continued to affect the population disproportionately and that it was not reaping the benefits of the considerable investments being made”.

In paragraph 77 of both the advance and the final report (S/2016/355), of 19 April 2016, which was reissued for technical reasons on 27 April 2016, the UN Secretary-General underlines that “the dire humanitarian situation, coupled with the absence of access to natural wealth and resources in Western Sahara west of the Berm, prevents the Western Saharans in the refugee camps from enjoying their economic, social, and cultural rights”.

The concerns about Morocco’s illegal economic activities in the occupied parts of Western Sahara have also been highlighted in a letter addressed recently to the Foreign Ministers of the European Union (29 August 2017) by 27 Sahrawi civil society organisations based in the occupied Territory and the refugee camps. The Sahrawi organisations underline that the revenues extracted from exploiting the resources in the Sahrawi occupied territories are used for creating jobs for Moroccan settlers, whose presence there is heavily subsidised and supported by the Moroccan State. They also stress that the indigenous Sahrawis, who are denied their basic political and socio-economic rights and treated as second-class citizens in their own land, have not benefited from the funds that Morocco claims to have invested in the Territory.

In brief, it is very clear that Morocco has been engaged in unlawful economic activities in the occupied parts of the Non-Self-Governing Territory of Western Sahara in flagrant violation of UN relevant resolutions, including UN General Assembly resolutions 1803 of 1962 and 71/103 of 2016, among others.

Obviously, the main aim of exploiting the Sahrawi natural resources by Morocco is to link Western Sahara economically with the Moroccan economy and to entrench the Moroccan presence by building more infrastructures for the increasing Moroccan settlers in the Territory. In addition, by involving other international actors in its unlawful economic activities, Morocco aims to gain international legitimacy for its occupation of the Territory. For these reasons, together with its well-known obstructionist attitude towards the UN peace process, Morocco’s main strategy nowadays is simply to “buy time”, hoping that one day the international community will have no choice but to resign itself to the *fait accompli* and end up accepting and recognising its *de facto* annexation of Western Sahara.

The POLISARIO Front, as the sole and legitimate representative of the Sahrawi people (UNGA resolution 34/37 of 21 Nov. 1979), has constantly denounced the systematic plundering of the natural resources of the Sahrawi people by the occupying power, Morocco. It has also made it clear that any involvement in the exploitation and marketing of the Sahrawi natural resources without the prior and express consent of the Sahrawi people represents an act of theft and is therefore unethical and illegal from the standpoint of international law. Furthermore, these unauthorised activities only help to boost the Moroccan claims of sovereignty over Western Sahara in a way that jeopardises the UN efforts to reach a peaceful and lasting solution to the conflict.

In conclusion, given Morocco’s continued exploitation of the Sahrawi natural resources which is often done in complicity with third parties, the POLISARIO Front remains determined to pursue all legal avenues, under international law, to defend the supreme interests of the Sahrawi people and their inalienable right to self-determination in all its aspects including their permanent sovereignty over their natural resources and the territorial integrity of Western Sahara.

I thank you for your attention.

**Application de la résolution 71/103 de l’Assemblée générale au Sahara occidental**

**Genève, le 12 septembre 2017**

**Maître Gilles Devers (Lyon) – Avocat**

**Représentant légal du Front Polisario devant la Cour de Justice de l’Union Européenne**

Merci Madame la modératrice.

Je vais parler uniquement de l'action juridique en m'adressant à un public de politiques, qui ensuite doivent prendre les décisions et je voudrais bien souligner que, pour moi, le droit permet de passer des étapes, très importantes dans le système juridique tel qu'il est, mais que ces étapes juridiques ne sont rien, et toute l'histoire des mouvements de libération le montre, s'il n'y a pas derrière un gros travail politique, économique, social et culturel.

Donc, les actions, les victoires juridiques ont besoin de reposer sur de actions politiques fortes et je dois dire que, depuis le premier jour, nous travaillons vraiment dans une ambiance excellente de compréhension avec les dirigeants du Front Polisario et je veux rendre hommage au Président Abdelaziz, il était tout de même pas évident de donner mandat à des avocats d'attaquer des accords entre l'UE et le Maroc devant la CJ quand on sait le rôle qu'a eu l'Europe. Il a eu cette lucidité et je crois qu’il faut s'inscrire dans cette dimension qui finalement est, et là j’alerte un peu tout le monde sur ce plan, le passage du droit proclamé au droit effectif.

Il ne s'agit pas simplement de proclamer les droits, il faut les rendre effectifs et on utilise un certain nombre d'outils, notamment le passage est très clair entre l'avis rendu par la Cour internationale de justice en 1975 et l'arrêt qui est rendu par la Cour de justice européenne en 2016. Les règles sont pratiquement les mêmes, ce qui change, c'est que maintenant on applique le droit, et c'est ce qui change tout, je vais essayer de vous le démontrer.

Donc cet arrêt est vraiment plein de richesses. Je crois qu'il n'a pas toujours été assez compris. Il est vrai qu’il est basé sur une lecture juridique qui n'est pas évidente. J'en tire plusieurs enseignements :

Le premier est le passage au droit interne du droit international et des résolutions de l'ONU qui sont visées en tant que telles dans l'arrêt. Chez les juristes il y a eu une grande discussion pour dire que c'est du droit international donc on ne peut pas l'appliquer devant le juge interne. C'est exact dans la plupart des pays, mais avec cet arrêt nous avons voté le passage en utilisant l'outil qui est le droit européen et la Cour a parfaitement joué le jeu.

Je veux souligner la qualité rédactionnelle de l'arrêt qui fait passer le droit international et les principes du droit international dans le droit européen, ce qui fait que ces règles sont maintenant applicables à l'encontre de tous les citoyens européens, de toutes les entreprises européennes et par tous les juges européens. C'est évidemment une avancée qui est absolument considérable vu que l'entreprise qui est au Sahara occidental, complice de la colonisation et qui pensait être protégée par le Royaume du Maroc et par la France, va découvrir qu'elle est maintenant dans l'insécurité juridique et que si elle veut poursuivre ses activités, elle doit passer par le Front Polisario.

- 2 -

Le deuxième enseignement très important de cet arrêt est la règle fixée avec une limpidité totale. Il y a deux territoires distincts et séparés et l'accord qui est signé avec le Royaume du Maroc ne peut avoir aucune application sur le territoire du Sahara occidental et dans les eaux du Sahara occidental, aucune application. De plus, le paragraphe 106 de l’arrêt prend explicitement position pour dire que la question n'est pas de savoir si l'exploitation économique profite ou ne profite pas à la population sahraouie. La seule question est de savoir si le Représentant du peuple du Sahara occidental a donné son accord. C'est un acquis qui est absolument fondamental et qui balaye complètement la question de l'administration de facto qui n’a aucun fondement légal, ni juridique.

Administration de facto, il faut bannir cette notion. Le Maroc est une puissance occupante et l'Europe ne peut aller au Sahara occidental qu'avec l'accord du Front Polisario. Tout ce qui se fait sans l'accord du Front Polisario est illégal et sans effet en droit européen. C'est donc une règle qui a une très grande portée vu qu’elle met fin à une lecture du droit, que je vois encore hélas trop présente.

Je salue sur ce plan, la décision de justice qui a été rendue à Port Elisabeth dont vous avait parlé Madame l'Ambassadeur, il y à quelques minutes, où le juge se situe dans la même perspective, on ne se pose pas la question de savoir si faire des routes, installer un poste, construire une école, peut présenter un intérêt pour la population sahraouie quand ça vient de l'argent du phosphate, de l'argent du sable ou d'autres choses. La seule question est : est ce que le Président du Front Polisario a donné son accord ? Il ne l'a pas donné, c’est illégal et c'est illégal sans rémission.

Le troisième enseignement**,** extrêmement important encore qui résulte de cet arrêt, c'est que nous n'étions pas seuls dans cette procédure. A l'origine, nous avons attaqué un acte du Conseil de l'UE et le Conseil, c'est la réunion des 28 Chefs d'Etat et de Gouvernement, c'est l’organe qui prend les décisions. Donc, c'est un acte du Conseil de l'UE que nous avons attaqué. Est venue s'ajouter dans la procédure la Commission européenne, qui est l'organe européen chargé de l'application des décisions du Conseil. Ils étaient deux et ça faisait déjà pas mal, vu qu’ils représentent les Etats, mais nous avons vu arriver, je suis ici dans une instance internationale, la France, l'Espagne, le Portugal, la Belgique, l'Allemagne et nous avons vu arriver aussi un syndicat agricole marocain, qui n'avait rien d'un syndicat et qui avait tout du faux-nez des autorités marocaines, qui étaient venus pour écraser le Front Polisario. Concrètement, le Front Polisario a fait une action en justice pour savoir si le statut de représentant du territoire non-autonome du Sahara occidental, que l’Assemblée générale de l’ONU lui a octroyé depuis 1979, avait une valeur juridique devant un tribunal et pouvait être opposé à tout acteur opérant sur ledit territoire.

Le résultat, c’est qu'ils ont tous perdu et que le Front Polisario a gagné contre tous. Il a gagné contre Conseil, il a gagné contre la Commission, il a gagné contre la France, contre l'Espagne, contre le Portugal, contre l'Allemagne, contre la Belgique et contre le Royaume du Maroc qui était tout à fait partie prenante. Quand vous entendez demain ces pays, je veux dire la France, je suis Français, je peux critiquer mon Gouvernement, quand vous entendez ces pays qui vous disent oui, mais il faut … Non, c'est fini ça, vous avez voulu entrer dans le procès, personne ne vous l’a demandé, vous vous êtes battus dans le procès pour écraser le peuple sahraoui. La Cour de Justice vous a donné tort. Aujourd'hui, vous devez changer de politique parce que votre politique est illégale et est contraire au droit. Il ne s'agit plus d'arguments politiques. Nous avons rencontré des parlementaires portugais, espagnols et français et ils nous disent « …mais la politique », non, ce n’est plus la politique, la France ne peut pas avoir une politique illégale. Le droit est une construction universelle. Il faut donc les ramener sur ce plan.

Le quatrième enseignement est que le message qui était porté par le Front Polisario, c'est-à-dire, s'adresser à la justice pour construire l'avenir d'un peuple a été reçu à 100% par la justice européenne. Quand je dis la justice européenne, et en parlant devant un public très avisé, je fais tout à fait la différence entre l'UE, instance politique, et la justice européenne, qui a compris le Front Polisario.

- 3 -

La justice européenne fonde son arrêt sur la Charte de l'ONU. Si on lit l’arrêt, on constate que la première référence juridique c'est « l'article 1 » de la Charte de l'ONU. La coexistence des peuples est la condition de la paix dans le monde et c'est sur cette base là que la Cour s'est prononcée. C'est-à-dire que l'idée d'un peuple, parlons franchement, nous sommes en 2017, un peuple musulman, arabe, occupé qui s'adresse à la Cour de Justice de l’Union Européenne pour connaître le droit applicable à son territoire. C'est un message qui a une portée considérable et sur lequel nous devons encore beaucoup travailler, mais nous voyons des choses tout à fait claires, notamment dans cette sphère très influente des professeurs de droit. Aucun n'a critiqué l’arrêt, tout le monde l'a approuvé. Il y a eu un seul Professeur, mais on sent même l'odeur de l'argent marocain dans sa plume quand il écrit. C'est-à-dire, qu'il y a ici un bloc de droit et que le devoir de tous, c'est de pouvoir faire appliquer maintenant ce bloc de droit.

Sur ce plan, je dirais tout d'abord qu’il faut abandonner l’idée qu’on fait des procès, un peu tout azimut, on va perdre, mais on va témoigner de la justice. Non, nous avons le droit avec nous. Le peuple sahraoui a le droit avec lui. Le peuple marocain est un peuple ami, mais les dirigeants marocains n'ont aucun argument juridique. Nous avons démontré depuis le début une théorie avec des principes, des références de droit international et des références de droit européen. Nous nous sommes fondés sur la jurisprudence rendue par d'autres. Nous nous sommes servis des combats pour l'indépendance d'autres Etats, d'autres peuples. En face, qu'est ce qu'on nous a opposé ? tout n'est pas recevable, là ce n’est pas les bons arguments, là il manque une pièce, mais jamais il n’y a eu quelqu'un pour nous dire voilà un fondement juridique pour que le Royaume du Maroc puisse être présent au Sahara occidental, jamais, et c'est pour cela que le leadership et l'avenir passe par l'économie, la culture et la politique, mais il faut utiliser le droit pour faire basculer des étapes dans le rapport de force, parce que nous voyons à tout moment que les Sahraouis sont très forts devant les tribunaux et que nous n'avons jamais un argument en face.

Le plus bel exemple vient de l'Afrique du Sud encore une fois, où la Haute Cour a rendu un magnifique arrêt, qu’il faut absolument lire. Comme quoi c'est bien de lire les résolutions de l'ONU, mais il faut prendre aussi un peu de temps pour lire les décisions de justice. Dans ce cas précis, il s'est passé quelque chose qui parle au cœur, en tant qu’avocats. Car, quand un arrêt est rendu et que vous n'êtes pas content, vous faites appel. C’est ce qu’ont fait l’Office Chérifien des Phosphates (OCP) et la société **Phosboucraâ**, qui s'est implantée à 100% au Sahara occidental en toute décontraction. Ils ont fait appel, mais, ils se sont désistés de l’appel et ça, juridiquement, a un sens considérable parce que ça veut dire qu'ils ont accepté la décision de justice. Donc, parlant aux Représentants du peuple africain, je vous dis sur tout le territoire africain, vous avez une décision de justice acceptée. Nous avons ici cette démonstration encore, qu’ils préfèrent qu’il n’y ait pas d’arrêt de Cour d'appel parce qu'ils savent qu'ils vont perdre. Ils préfèrent qu'il n'y ait pas d'arrêt de Cour de cassation parce qu'ils savent qu'ils vont perdre. Ils préfèrent en rester au premier degré. Donc, l'action juridique protège les droits du peuple Sahraoui et peut faire progresser sa cause.

Enfin, je voudrais souligner quatre points importants :

Le premier c’est que nous avons besoin d’un soutien intellectuel et juridique. Je parle de la sphère juridique, qui compte beaucoup dans le monde du droit international. Dans tous les Etats et tous ceux qui sont représentés ici, il y a de grandes universités avec des étudiants assoiffés de savoir et des professeurs de renom. Nous souhaitons créer une sorte de « Comité de référence » pour que quand les Sahraouis prennent une initiative, nous puissions communiquer de manière simple avec un réseau d'universités dans le monde afin de faire savoir ce qui se passe, surveiller les décisions rendues et les faire connaître. Nous serons par contre très indépendantistes, et donc très volontaires, pour dire que c'est toujours le Front Polisario qui donne le cadre de l'action.

- 4 -

Le deuxième point, c'est que nous avons besoin de contacts avec des syndicats vu que les syndicats se trouvent en situation de concurrence déloyale quand il y a exportations illicites de produits. La concurrence déloyale n'est pas le sujet qui vous intéresse le plus aujourd'hui, mais pour un avocat qui aime bien gagner les procès, c'est un cadre merveilleux, vu que dans le monde de la mondialisation des échanges, rien n'est plus combattue que la concurrence déloyale. Or, exploiter les ressources contre la volonté du peuple en truandant des certificats d'origine, en produisant de fausses factures, c'est déloyal. Donc, les contacts avec les syndicats et leurs avocats vont nous permettre de faire de très grands progrès. Nous commençons en France la semaine prochaine un procès avec le syndicat « Confédération paysanne » pour faire interdire les importations de tomates venant du Sahara occidental sur le marché européen.

Le troisième point est que, comme cela a été fait en Afrique du Sud, nous avons des proies extrêmement tentantes que sont les bateaux, les navires, les cargos et également les avions. Ce sont des procès qui ont un impact considérable, mais ils supposent de nous mettre au niveau de réplique des parties adverses. Donc, nous lançons ici un appel très clair à organiser des soutiens pour que le peuple sahraoui puisse se placer au niveau des adversaires. Je donne un exemple extrêmement clair : « Transavia », qui est une filiale d'Air France, qui a décidé de faire un vol entre Paris et Dakhla. C’est une société européenne à laquelle s'applique l’arrêt du 21 décembre de la Cour Européenne. Ils n'ont aucun droit de pouvoir déposer des avions sur le territoire du Sahara occidental tant qu'il n'y a pas l'accord préalable du Front Polisario. On leur a déjà écrit, un bon procès qui est à faire, mais nous ne pouvons pas en l'état actuel nous lancer sur ce genre d'action, c'est regrettable.

Dernier point : nous allons engager très rapidement d'autres actions. Nous allons commencer en Espagne et je veux dire aussi que quand je vous donne ces informations je ne suis absolument pas dans la trahison du secret. Le Front Polisario avance dans la transparence, cartes sur table, il dit ce qu'il va faire et je sais qu’il préférerait négocier d’avance plutôt que de saisir les tribunaux. Si vous voulez déployer des activités économiques ou autres au Sahara occidental, la CJUE a dit qu’il faut avoir le consentement préalable du Front Polisario. Tous les clients du Royaume du Maroc, les entreprises européennes en particulier, qui passent des marchés sur les ressources naturelles du Sahara occidental doivent savoir que nous allons leur demander une deuxième fois le paiement du prix. Il n'y a aucune raison pour accepter que la contrevaleur des ressources naturelles extraites du Sahara occidental aille ailleurs que dans la caisse du peuple sahraoui. Et le payement qui est fait contre du sable, le paiement qui est fait contre des phosphates, n'est valable que s’il est fait aux représentants du peuple sahraoui : c'est-à-dire, au Front Polisario.

Je lance ici un appel : nous avons besoin d’informations fiables sur les entreprises opérant aux Sahara occidental et sur leurs clients qui depuis 40 ans ont développé, dans l’illégalité, une économie de la colonisation. Il est temps que la souveraineté permanente du peuple Sahraoui sur ses ressources naturelles soit respectée par tous.

Je vous remercie.

**GSGWS Side-event – Geneva 2017, September 12th**

**Implementation of UNGA resolution 71/103 in Western Sahara**

**Mr. Erik Hagen**

**Representative of “Western Sahara Resource Watch”**

I thank you the Geneva Support Group for Western Sahara for inviting me at this side-event.

We named them champions governments! Be careful what I am saying today, we named shame companies, we confront them, we ask them what are you doing in Western Sahara? Have you sought the consent, have you obtained the consent? There are commercial ties between most countries in the world and Western Sahara; this means that for many of you it would be possible to use this as an opportunity to defend the Sahrawi cause by researching your trade with Morocco in Western Sahara.

There is also a whole obligation to report back issues to your companies, you are at risk not only of violating norms but also there are very motivated lawyers to follow legal processes. In our association, we have volunteers in some 50 countries, we share information between us and we contact companies involved. I am going to go through the different industries; you will hear names of governments and companies from different States.

Morocco produces most of its phosphate in Morocco. In our organization, we have no embargo policy on Morocco, all we find Morocco to be a legitimate country to trade with, but do not trade with goods from Western Sahara. About 10% of phosphate rock produced by Morocco is produced in the territory it occupies. It means, the Saharawi people, after 40 years of illegal plunder, they have now lost the most valuable part of the most valuable asset, but there is still phosphate left.

The production level is, every year, about 2 million tons, we know more or less where every kilo end up, we have more or less total control over the entire trade every day, we follow the vessels well: through harbor activity, through import harbor activities, through people working on different harbors internationally. We know where all the vessels go. From last year, vessels go into Canada, Lithuania, United States, Venezuela, New Zealand, Australia.

So we know where all the phosphate ends up, you will find that on our website reports (www.wsrw.org) of the annual trade, we call the report “P” for “plundered, ”P” phosphorus, the element of phosphorus is necessary for agricultural production fertilizers, so the importing harbors were in 8 to 10 different countries with very little variation from one year to the other. Canada, United States, New Zealand, India on the main import harbors, European Union has more or less stopped their vessels coming to Romania today. The first imported European Union after the judgment was today in Romania, we are starting also to trace the ownership of the vessels: which are the operators, owners group, owners of the vessels.

- 2 -

We are following the same methodology that was said in the anti-apartheid research (by the way, tracing the shipments going in and out of South African forests, were using actually many anti-war activists and old anti-apartheid activists), and we apply the very same methods that we used for the crude oil imports to South Africa, naming and shaming those importers.

For Switzerland and the United States, there is one ship operator, just one kilometer down the street here in Geneva, is mentioned in our report. There is one operator from Germany, you know the Dr. Oetker pizza, so the Dr. Oetker conglomerate is the operator of this vessel, and they lose 10’300 USD every day for the detention of the vessel in Porth Elisabeth. Now that is the kind of risk.

Now this vessel has been detained for the first domain, so we are talking of millions of dollars but this one company from Germany is losing by having the vessel arrested. This is the kind of risk that the shipping company from Geneva would face if they take on such incitements. Insurance companies should be aware, operators should be aware and importers and owners should be aware.

Regarding Canada, it is going to be a merger of two companies, one importing company to Louisiana (United States) with an importing company, or importing subsidiary, in Vancouver in Canada. These two main importers are going to merge, in two weeks from now, into one Canadian company, importing into the US and Canada, accounting for about 70% perhaps of the total exports from the occupied territory of Western Sahara. Now again the legal risks are considerable, would there be compensation demands that would be in hundreds of millions of dollars if it would ever be compensation about. So there is a legal risk.

There have been two drilling operations for hydrocarbons in Western Sahara since the occupation began: one offshore and one onshore. The Security Council in 2002 requested its legal counsel for an opinion: is it allowed for Morocco to issue oil licenses in Western Sahara? and the Secretariat of the United Nations said that it is not allowed, it is not legal if the representatives of the Saharawi people have not given their consent. And without taking this clear conclusion into account, the involved companies proceeded and they are now being operating since 2001 until today. There is an American company called Cosmos Energy partnering with a Scottish company called KAREN and an Irish UK company called SAN LEONE. So these two companies are the only ones to have drilled in Western Sahara under occupation.

We are expecting a new drilling offshore by the American company, American Scottish Company. The Swiss company GLENCORE has announced to Swiss media that they are pulling out.

- 3 -

We have thousands of refugees protesting against the Irish oil exploration SAN LEONE “go home” One man “cosmos energy do not drill in Western Sahara”. Now, there is no effort to seek the consent of the Saharawi people by the oil companies. If you go to the websites of GLENCORE or of COSMOS, all the references to the United Nations are lies, they are false representations when it comes to explain the legality of being there.

All aspects of consent are removed and the only way they are explaining their presence is by saying we do this to the benefit of the local populations. It is the way people talked about colonialism; I mean this is the way Europeans talked about Africa in the 18th  and in the 19th centuries.

The latest offshore surveys done just a few weeks ago, shows that fisheries vessels can dump more fish overboard as garbage than all the refugees from Western Sahara received in one year: one refugee receiving one box of sardines every month.

UN talks about the malnutrition in the camps! Half of the population live in refugee camps and get one box of sardines every month and one fishing vessel like this one Northern Europe can dump 1000 tons of fish, that is only one vessel, we are talking about a couple of 20 vessels like this.

Fish is exported in four ways: frozen fish, canned fish, fish oil and fish meat, and they end up in different markets. The fish oil, the value of the fish oil “omega-3” is about half the entire multilateral aid to the refugee camps just the fish oil, it is about 15 million Euros but ends up in France, the canned fish end up in West Africa, to countries many of them sympathetic to Western Sahara, some ends up in the Middle East, Turkey, Egypt, a bit everywhere.

Another kind of business is the one related to the transport of oil into Western Sahara. Spain is supplying all the oil or oil products needed for the Moroccan army of the fishing fleet or for the whole industry but also for the civilian population.

There are 12 plantations, we call this nonrenewable agriculture, it is based on fossil water, nonrenewable water reserves, there is a big lake under the desert and this water, a water for intensive agriculture production exported to Europe some also to North America. And we can see how the plantations have developed particularly since the European Union started its trade talks with Morocco in 2005. Some of plantations are owned by the Moroccan King who controls around 7% of the gross domestic product in Morocco.

The royal family, through its holding branch SNI, controls many of the sectors and one of them is wind energy. Siemens from Germany and ENEL from Italy are involved in energy infrastructures. Morocco is best in class in renewable energy but they keep building it in the occupied territories, they are cementing the occupation through windmills and solar plants.

- 4 -

Finally, of course, we have the beaches on the Canary Islands, they are all fake, the beaches on both Madeira, Canary Islands, building industry construction, industry, hotels and roads benefit from the illegal importation of sand of the desert in Western Sahara.

You find all of this I mentioned on our old website. There are good stories, we have companies pulling out understanding that there has been a mistake, they thought they were operating in Morocco, we actually have companies thinking they operate in Morocco, we have shipping companies with vessels all over the world and they did not really understand this until it happened and they say sorry we did not mean to do this we will never do it again. We have public pension funds, sovereign wealth funds, private banks, private pension funds, actively taking a stance.

I thank you for your attention.



**Side-event organized by the**

**Geneva Support Group for Western Sahara**

**Geneva - Palais des Nations – Tuesday 12th September 2017**

**Implementation of UNGA resolution 71/103 in Western Sahara**

Madame Chair, Excellences, Ladies and Gentlemen,

Let me thank the members of the Geneva Support Group for Western Sahara for their constant and strong support for the protection and promotion of Human Rights in Western Sahara and for inviting me to express the views of the Sahrawi National Commission for Human Rights on this very important subject.

I will take advantage of the extremely valuable presentations of the distinguished panelists who spoke before me to highlight some aspects related to the economic and other activities which affect the interests of the Sahrawi people.

First of all, nobody can forget that the occupation of part of Western Sahara that followed the invasion of the Territory by the Kingdom of Morocco in November 1975 provoked an armed conflict that lasted 15 years and left behind thousands of Sahrawi dead and wounded as well as hundreds of disappeared. Nowadays, more than 400 cases are unsolved.

Incidentally, I should underscore that as an Occupying Power, the Kingdom of Morocco is bound by the International Humanitarian Law and I am not going to give a detailed account of the violations of the Geneva Conventions by the Occupying Power in Western Sahara, but they are numerous, serious and are still continuing today.

The war has led tens of thousands of Sahrawis to seek refuge in the Algerian desert. More than 40 years later, the third generation of Sahrawi refugees is surviving around the city of Tindouf waiting for being able to safely return to their land, rejoin their families and freely exercise their inalienable right to self-determination.

- 2 -

The construction of the sand wall, called Berm, in the 80’s which still today divides the Non Self-Governing Territory of Western Sahara from North to South has disrupted the traditional style of life of the Sahrawi people and its nomadic economy. In addition, the Occupying Power has scattered near the wall hundreds of thousands of anti-personnel mines that have resulted in hundreds of dead and seriously wounded who have remained handicapped. Every year, some people and animals are victims of those mines.

It is worth to remember here that Western Sahara is the only Non Self-Governing Territory listed by the United Nations that has not an internationally recognized Administering power reporting to the UN Secretary-General in conformity with article 73 of the UN Charter. It is easy for anyone to understand that the obligation to promote to the utmost the well-being of the Sahrawi people is not a concern at all for the Moroccan authorities.

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 Sahrawi people awaits impatiently the organization of the referendum of self-determination.

Article 1 of the Declaration on the Right to Development states that the inalienable right to development implies the full realization of the right of peoples to self-determination, this right includes the exercise of the inalienable right to full sovereignty over all the natural wealth and resources. General Assembly resolution 71/103 reaffirms that the natural resources are the heritage of the peoples of the Non-Self-Governing Territories.

The continuing military occupation of Western Sahara by the Kingdom of Morocco that both, the UN Security Council and the UN General Assembly have condemned, perpetuates the separation of Sahrawi families and the impossibility for the Sahrawi people to develop their traditional economic activities and to exercise their sovereignty over their natural resources.

As pointed out by Mr. Devers, the recent judgments of the Court of Justice of the European Union[[2]](#footnote-2) and of the South African Supreme Court in Port Elisabeth[[3]](#footnote-3) have stressed that any economic activity in a Non Self-Governing Territory has to be agreed by the people of that Territory or they legal representatives, in this case, the Polisario Front[[4]](#footnote-4).

The actual economic development of Western Sahara benefits first and foremost the Moroccan settlers present on the Territory as well as Moroccan economic entities, in which the King of Morocco and members of his family have often a more or less significant participation. Foreign economic entities also operate in Western Sahara without consulting the internationally recognized representatives of Western Sahara. Since the extraction of raw materials and the production of goods in Western Sahara are mainly destined for export, we also denounce the complicity of foreign economic entities importing goods from Western Sahara and that of the States where those entities are based.

- 3 -

In adopting resolution 71/103, the General Assembly reaffirmed the need to avoid any economic and other activities that adversely affect the interests of the peoples of the Non-Self-Governing Territories and calls upon all Governments to take legislative, administrative or other measures in respect of their nationals and the bodies corporate under their jurisdiction that own and operate enterprises in the Non-Self-Governing Territories that are detrimental to the interests of the inhabitants of those Territories, in order to put an end to such enterprises.

The Sahrawi National Commission for Human Rights strongly deplores the attitude of the authorities of the EU and of those Member States who seek to circumvent the European Court's decision[[5]](#footnote-5) and deliberately choose to violate international law, including Human Rights law, and the obligations incumbent on them.

A study, published in 2015, by the European Directorate-General for External Policies entitled “Occupation / annexation of a territory: Respect for international humanitarian law and human rights and consistent EU policy”[[6]](#footnote-6) analyses, among others, the case of Western Sahara.

From the outset, the study highlights that, legally speaking an illegally annexed territory is occupied. Although the UN Security Council calls upon the parties to resume negotiations in good faith, the Moroccan authorities, in adopting Decree no. 2-15-40 in February 2015[[7]](#footnote-7) established a new territorial division of the Kingdom, which counts 12 Regions, among those: Laâyoune - Sakia El Hamra and Dakhla-Oued Eddahab in Western Sahara.

The study stresses that in case of an illegal situation, third states have a number a duties[[8]](#footnote-8). These duties entail that the EU and its member states shall not recognize an illegal annexation and that they shall not assist in the continued occupation and annexation, they also should treat legal acts carried out by the Occupying power as null and void.

Indeed, no State in the world has recognized the sovereignty of the Kingdom of Morocco over Western Sahara, on the contrary, the African Union and its member States recognize the Sahrawi Arab Democratic Republic as one of its founder-members. Nevertheless a number of Western powers, including Spain, the former colonial power, support politically and economically the Moroccan annexation policy, including by refusing the inclusion of the monitoring of the Human Rights in the MINURSO mandate.

If this was to be the case, everyone would be regularly informed about the serious and continuing violations of the fundamental rights of the Saharawi people, including the rights of the tens of thousands of refugees, as a direct consequence of the occupation of the Western Sahara and the illegal exploitation of their natural resources.

While deploring that there is no clear EU policy of non-recognition with regard to Western Sahara, the above mentioned study recalls that the basis for the EU’s external actions is article 21 of the EU Treaty, which includes the respect for the principles of the UN Charter and International Law.

- 4 -

The Sahrawi National Commission for Human Rights strongly encourages the EU political organs and the EU member States to implement the recommendations made by the authors of the study and in particular:

* to clearly establish that any annexation / occupation is illegal and to not recognize legal acts including new laws introduced by an illegal Occupying Power;
* to explicitly limit the application of any bilateral treaty with an Occupying Power to its internationally recognized territory;
* to discourage EU business/enterprises from commercial and investment links with settlements by means of formal advice or a prohibition and to adopt restrictive measures – sanctions – to illegal occupants and to individuals and private parties that contribute to an illegal occupation and finally;
* to continue to support the legitimate local populations in occupied territories and to support human rights defenders and civil society organizations.

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 implement a specific support programme for our Human Rights National Commission and the Sahrawi NGOs working on Human Rights.

I thank you for your attention.

1. UNGA resolution 1956 (XVIII) [↑](#footnote-ref-1)
2. http://curia.europa.eu/jcms/upload/docs/application/pdf/2016-12/cp160146en.pdf [↑](#footnote-ref-2)
3. http://www.saflii.org/za/cases/ZAECPEHC/2017/31.html [↑](#footnote-ref-3)
4. UNGA resolution 34/37 [↑](#footnote-ref-4)
5. 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-5)
6. http://www.europarl.europa.eu/RegData/etudes/STUD/2015/534995/EXPO\_STU(2015)534995\_EN.pdf [↑](#footnote-ref-6)
7. http://www.pncl.gov.ma/fr/News/Alaune/Pages/Nouveau-d%C3%A9coupage-r%C3%A9gional-du-Royaume-.aspx [↑](#footnote-ref-7)
8. Summed up by the International Court of Justice in the Advisory opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (http://www.icj-cij.org/en/case/131/advisory-opinions) [↑](#footnote-ref-8)