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Members of the

**Geneva Support Group for Western Sahara**

**Invite all delegations to the 39th session of the UN Human Rights Council**

**to a High-Level side-event on**

**Three Decades for the Eradication of Colonialism:**

**assessment and challenges for Western Sahara**

**Tuesday 11th September 2018 – 12:00 to 1:30 PM – Room XXIV**

**Panelists:**

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

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

***H.E. Mr. Mohamed Y. Beissat Deich –*** *Minister – Councilor of the President of the Sahrawi Arab Democratic Rep.*

***Dr.******Leonardo R. Perez*** *- Independent Expert on International Relations and Politics*

***Moderator:***

***Mrs. Zaira Zafarana –*** *International Fellowship for Reconciliation (IFOR)*

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

***English / French interpretation***

Afrique du Sud - Algérie - Angola – Botswana -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 39ème session du Conseil des droits de l’Homme**

**à un Side-event de Haut-Niveau**

**Trois Décennies pour l’Eradication du colonialisme:**

**bilan et perspectives au Sahara occidental**

**Mardi 11 Septembre 2018 – 12:00 à 13:30– Salle XXIV**

**Intervenants:**

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

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

***S.E. Mr. Mohamed Y. Beissat Deich –*** *Ministre – Conseiller du Président de la RASD*

***Dr.******Leonardo R. Perez*** *- Expert Indépendant sur les Relations et les Politiques Internationales*

***Modérateur:***

***Mme Zaira Zafarana –*** *International Fellowship for Reconciliation (IFOR)*

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

***Interprétation français / anglais***

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**High-Level Side-event at 39th session of the Human Rights Council**

**Three Decades for the Eradication of Colonialism :**

**Assessment and challenges for Western Sahara**

**11 September 2018**

**H.E. Ambassador Marciano da Silva**

**Permanent Representative of Timor-Leste**

As the current chair of the Geneva Support Group for Western Sahara (GSGWS) and as a speaker of this event, I would like to express my sincerest thanks to everyone for taking the time to attend this side-event. Like the previous side-events, this one continues to focus on Morocco’s illegal occupation of the territory and the violation of the rights of the people of Western Sahara to decide their own destiny.

Before I continue with my presentation, allow me to inform you that the Geneva Support Group is composed of 16 States includes Uganda. Following a conversation with the Representative of Vanuatu, Mr. Mr. Noah Patrick Couback, I was told that authorities in Port Villa were considering to be part of the GSGWS.

I would like to acknowledge the presence of H.E. the Minister Beissat of the Sahrawi Arab Democratic Republic and the experts who are now with us today to keep us informed and share with us the changes and challenges of the Western Sahara's struggle for independence.

I have spoken several times in side-events on the question of Western Sahara. I hope this time I would be able to convince you that it is worth helping the people of Western Sahara to be free as a people and as a nation based on their choice. Freedom belongs to every nation, and therefore we must fight for it. It is normal to fight for independence. Not all countries went through conflict to obtain their freedom and right as a nation. However, most of them did. The fight is worth it.

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In my own country, Timor-Leste, it took us almost two and a half decades to get our freedom. At the beginning, we felt as if the world had conspired to bury us alive. However, how hard the struggle and how far the path towards our independence was, we kept one thing alive, our hope. If we were to die, our hope would be the last to perish. Timor-Leste urges Western Sahara not to stop fighting and keep your hope alive.

Twelve days ago, on 30 August 2018, in Timor-Leste, people celebrated the day of the referendum, the day where people voted to determine their own future. The overwhelming result of the referendum that favored the independence marked the end of the long struggle of the people. We claimed our rights back as a people and as a nation. Like all other nations, we endured the suffering for almost 25 years.

Western Sahara has suffered for decades, and the world appears to have been indifferent to what is happening in that occupied territory. People are desperate and cry out as their rights to live have been deprived. Their resources exploited without their consent. Timor-Leste went through the same experience in the course of our struggle for independence.

Western Sahara and Timor-Leste are from different regions of the globe. However, they share historic similarities in the struggle for self-determination. The UN managed to hold a referendum in Timor-Leste following discussions after discussions in many occasion among parties concerned. This had allowed the people of Timor-Leste the opportunity to decide on their destiny.

Now Timor-Leste is free, and it continues to help the people of Western Sahara to achieve their independence. Independence of Western Sahara is possible.

The UN should manage to hold a referendum in Western Sahara to allow the Saharawis to decide their own destiny. This will put an end to the ongoing conflict in the territory. I, therefore, urge all members of the UN to advocate for the referendum in Western Sahara.

The people of Western Sahara have suffered for many years, as their rights to freedom are denied, their happiness and prosperity are deprived and taken away. Decade after decade, many countries, family members of the United Nations, appear to have ignored the problems taking place in Western Sahara. I urge countries in the African region should do more to help solve the conflict on Western Sahara.

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In conclusion, like in Timor-Leste, we kept our hope vivid while fighting for our liberty, Timor-Leste wishes the people of Western Sahara to do the same. Do not quit, keep fighting, and keep your hope alive, your independence is only a question of time.

I thank you for your attention.

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**39th Session of the Human Rights Council**

**High-Level Side Event**

**Three Decades of the Eradication of Colonialism:**

**achievements of the decades**

**H.E. Ambassador Sabine Böhlke-Möller**

**Permanent Representative of Namibia**

Madame Chair,

Excellencies,

Ladies and Gentlemen,

I was requested to speak about the eradication of colonialism in Namibia in comparison to Western Sahara. One of Namibia’s leaders, Mr. Andimba Toivo ya Toivo, said eight years after Resolution 1514 was implemented, when he was tried and convicted in a terrorism case in South Africa in 1968:

‘We are Namibians and not South Africans. We do not now, and will not in the future recognize your right to govern us; to make laws for us in which we had no say; to treat our country as if it were your property and as if you were our masters. We have always regarded South Africa as an intruder in our country’.

You will agree, that the description of Namibia 50 years ago, reminds of Western Sahara’s situation today.

Upon the passing in 1960 of Resolution 1514, referred to as the Declaration on the ‘Granting of Independence to Colonial Territories and Peoples’ the map of the world as well as the UN membership began to change dramatically.

Although the principle of self-determination had been included in the creation of the Charter 15 years earlier, it was not until the results of this resolution actually manifested that the first substantive change in membership composition took place in the UN General Assembly: the addition of more than 35 members. However, among the more conspicuous cases of people in need of external support for self-determination or independence at the time were the Namibians, who were unaffected by this resolution, most likely due to the problematic and complicated nature of our legal status and political inconvenience.

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During this period when repeated appeals through legitimate channels were made, it seems that ultimately in 1960, in spite of Resolution 1514, the letter of the law and its machinations failed to recognize the spirit of the law and Namibia was overlooked.

No mention of Namibians as a people with a right to self-determination occurred in a legal document before 1966.

The involvement and concern of the international community, especially the Non-Alignment-Movement, eventually did exercise influence.

**A few words on Namibia’s history**

To understand Namibia’s long path to independence, allow me to highlight some historic facts. Namibia was a German colony from 1885 to 1915. When the First World War broke out in 1914, South African forces invaded South West Africa/Namibia and occupied the country as part of the Allied effort against Germany in WWI on 9 July 1915. In 1920 Great Britain became the territory’s mandatory power, with South Africa assigned to act in Great Britain’s interest.

At the Peace Conference in Paris and under the Treaty of Versailles the League of Nations was formed on 7 May 1919 by the Allied powers to prevent global conflicts. The League also determined the fate of the German colonies, and South Africa officially became a mandatory power over SWA on 28 June 1919, under the treaty. SWA was established as a ‘C’ mandate under the Permanent Mandates Commission of the League of Nations, and administered as part of South Africa. At the end of that year South African law was instituted in the country.

South Africa signed an agreement to administer South-West Africa under the terms of Article 22 of the Covenant of the League of Nations in 1920. The agreement specified: ‘*The Mandate shall promote to the utmost the material and moral well-being, and the social progress of the inhabitants of the Territory, the Mandatory shall see that the slave trade is prohibited, and that no forced labour is permitted except for essential public works and services, and then only for adequate remuneration*.’ However, under South Africa martial law was established, forced labour and mass imprisonment, racial segregation and attempts to destabilise traditional leadership with a programme of ethnic reorganization took place.  South Africa hoped to settle the question of poor white South Africans by relocation and land allocation in SWA/Namibia. White settlers from South Africa and Angola were heavily subsidised and infrastructure such as dams and waterholes were developed to encourage white settlement in the country.

South African-imposed martial law came to an end in 1921, and SA officially took over administration of SWA. Despite the terms of the mandate, South Africa in fact administered the country as the fifth province of South Africa, applying the laws of SA to SWA.

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**1945-46** - **SA attempt to Incorporate Namibia**

After the end of the Second World War, the Allied Forces decided to establish the United Nations to replace the League of Nations which had given South Africa the mandate over South West Africa. The South African Indian Congress and the South African Communist Party realised that if the League of Nations is replaced without resolving the legal status of South West Africa, the people in the territory were going to suffer, especially as the intention of the South African Government was to simply annex South West Africa as a fifth province. That would not have been in the interest of the indigenous inhabitants, if it was accepted by the international community. When General Jan Smuts, the then South African Prime Minister was going to the formation of the United Nations in New York, accompanied by the Native Commissioner for Ovamboland, Cocky Hahn, he promised his followers in South Africa that he will come back with South West Africa in his briefcase, as **a present** from the allies because of South Africa's participation in World War II.

The South African regime refused to recognise the jurisdiction of the Trusteeship Council of the United Nations which had replaced the League of Nations and used the opportunity to bring Namibia into the Union of South Africa. From December 1945 to April 1946 SA leaders, ‘consulted’ with Namibian leaders, trying to persuade them to accept South African rule.

The South Africa presented figures to the UN to sway the body, saying the whites were in favour of incorporation, as are 208,850 blacks. It said 33,520 blacks were opposed to the move and 56,870 had not been consulted. Several traditional leaders opposed the procedure and results of the referendum.

Chief Frederick Maharero, in exile in Botswana requested Anglican Reverend Michael Scott to collect information for a petition to the UN from traditional leaders in Namibia. On 26 August 1946 one of the first petitions was sent to the UN from Chief Hosea Kutako, Festus Kandjou and David Witbooi on behalf of their different communities against the annexation of the country to South Africa and to demand that the country is placed under the Trusteeship Council of the UN.

In a vote, the UN General Assembly on 14 December 1946 rejected the South African attempt to incorporate SWA, with 37 against, none for, and 9 abstentions. A resolution reiterated the General Assembly’s wish to place Namibia under a trusteeship. South Africa refused and announced it would discontinue submitting the required annual reports. Many protracted disagreements between the UN and South Africa followed.

In 1948 the National Party comes to power in South Africa on a ticket to enforce apartheid. The party rules until 1994, instituting its policy (of apartheid) not only in SA but in Namibia as well.

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In Namibia, organizations were formed, seeking to improve the living conditions and wages of contract laborers but also broaden their aims to the right of self-determination and independence from South Africa.  Various appeals in the form of petitions and communications concerning the legal status of Namibia were sent to the Security Council and General Assembly.

The Ovamboland People’s Congress (OPC) was launched in 1958 by a group of Namibians in the Cape. Formed to improve the conditions of its members, the organisation has close links to the African National Congress of South Africa.

On 24 September 1959 the United Nations received a petition from OPC, informing the body of the oppressive conditions blacks are being subjected to.

The OPC also wrote to the Pope, and to Queen Elizabeth II, saying:, *that the Government of South Africa has failed to comply with the provisions embodied in the mandate agreement, appealing to Her Majesty’s Government to revoke the mandate forthwith and to place it under the United Nations Trusteeship System*.’  The letter is returned and the OPC is told to forward it through the Queen’s representative, the Governor-General of South Africa.  Mr Ya Toivo is then deported from Cape Town and sent to Namibia.

1958-59: Forced Removals are taking place in several parts of the country, from fertile land to desolate land, from Windhoek to a new township, Katutura. The removals results in protests in which people are killed, and which leads to the beginning of the war of liberation.

The UN Committee on SWA raises the issue of the killings at the UN, and the body calls on the South African regime to ‘*stop the deplorable use of force*’. In response, the regime orders the leaders out of Windhoek, and arrests people on charges of public violence. The homes of political leaders are raided, and many go into exile in Dar es Salaam.

Namibian politician Advocate Fanuel Kozonguizi is sent to New York to continue and support the work of Rev Michael Scott at the United Nations.

In September 1960, different parties joint to form a **united** front: Chief Kutako, Chief Samuel Witbooi and SWAPO jointly petitioned the UN against South African rule. The UN General Assembly considered the case of Namibia, and Liberia and Ethiopia announced that they have instituted proceedings against SA at the International Court of Justice. (six years later the International Court of Justice handed down its verdict on the case, ruling against the right of the two countries to bring the case to the court.)

In May 1962 a UN mission arrived in SWA, stoking hopes of independence, with many Namibians believing that independence would be achieved by 1963. The mission was undertaken to secure the withdrawal of South African military personnel, the repeal of discriminatory laws, the freeing of political prisoners and the holding of elections under the supervision of the UN. The SA regime insisted on releasing a joint statement. When the head of the mission fell ill, the statement was released without his approval. Doubt was cast on the UN’s ability to move the situation forward.

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The Organisation of African Unity was established in 1963, and recognized SWAPO as a legitimate representative of the Namibian people. Amongst other the OAU was charged with the task of spearheading the liberation struggle in the territories, which were still under colonial domination and played an important role in Namibia’s fight for freedom.

In August 1965 SWAPO set up its first military base in in the North of Namibia and engaged a month later the armed struggle when Swapo’s military wing engaged with South African forces in Omgulumbashe.

On 27 October 1966 (**34 years before Namibia’s independence**) the UN terminated SA’s mandate over Namibia and resolved to bring the country under the administration of the UN.

In 1967 SA introduced the Terrorism Act, which covered acts retrospectively from 1962 and soon after a treason trial against many SWAPO leaders and fighters took place in Pretoria. Arrested after the launch of the military struggle, they were severely tortured, and the regime tried to turn many into state witnesses, but failed. The defence argued that South Africa had no jurisdiction over SWA, and cannot apply its Terrorism Act to Namibians. But many of the leaders, announced that they have taken part in the struggle against SA as they did not recognise the regime. Twenty of the detainees are sentenced to life imprisonment: while nine are given 20-year sentences, Most serve their sentences on Robben Island.

In June 1971 the ICJ delivered its verdict (this time requested by the GA), announcing that the South African presence in SWA was illegal, and that the administration was obliged to withdraw from the country.

**In 1977** the UN passed Security Council Resolution 435 for settling the Namibian problem in 1978, after which most states refused to recognize South Africa’s claims to Namibia; even though independence did not come about until 1990, after the 1988 tripartite agreement with Cuba and South Africa. In other words, most of the international community of states dealt with the Namibian Council as the lawful administrative authority over Namibia at least a full decade before actual independence. During this time, within the UN’s framework, Namibia was able to consolidate resources on its territory, set the sanctions regime against South Africa in place, and continued its armed resistance until the final withdrawal of foreign forces and the agreement for independence from South Africa in place.

Although South Africa did not recognize Namibian independence and did not withdraw from its territory until 1988-1990, the world community, following the actions taken at the UN and at the ICJ created a defined legal framework for Namibia’s status, declared its independence, imposed sanctions on South Africa, and created the mechanism to implement independence over a period of 20 years before independence was actually achieved. And this was so, even though the UNSC never actually voted to take Chapter VII enforcement action to force South African withdrawal from South West Africa.

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Much of these developments occurred through a robust legal strategy involving submissions to the ICJ from the start, and the aggressive work, led by the Afro-Asian bloc and the Non-Alignment States along with the Committee of Twenty Four in the UNGA to assert, advocate for, and litigate to preserve Namibian rights and resources within and outside the UN itself.

Western Sahara, unlike Namibia, was not a League of Nations Mandate, but a Spanish colony from 1885-1975. In the decolonization efforts following the adoption of the UN Charter, Western Sahara was declared first a non-self-governing territory. UN Resolution 1514 became the foundation for the UNGA’s position that Western Sahara was entitled to self-determination, and it passed several resolutions calling on Spain to bring about Sahrawi Independence through a UN supervised referendum.

In Western Sahara, the UN’s position evolved from a framework for self-determination and independence to a commitment to a negotiated referendum that could include an independent state for some other form of autonomy within the Moroccan state.

The ICJ issued its Western Sahara Advisory Opinion in 1974 stating that the Sahrawi people were the indigenous inhabitants of the territory, they were entitled to self-determination in their territory and neither Morocco nor Mauritania had any superseding claims to the territory. Very important: the ICJ Western Sahara Advisory Opinion interpreted UNGA Resolution 1514, as ‘confirming that the application of the right to self-determination requires a free and genuine expression of the will of the peoples concerned, the Sahrawis’. The ICJ as such has articulated an obligation for the international community not to recognize Morocco as the colonial power, but the UN appears to have backed away from that commitment in favour of a negotiated framework with Morocco over terms of a referendum.

From 1976-1983, the UN relinquished responsibility over the Western Saharan question to the OAU as a regional issue and the OAU Assembly established an Ad Hoc Committee of Heads of State and Government to seek a solution of the Western Sahara problem on the basis of self-determination. The Ad Hoc Committee presented a set of conclusions that called for the free exercise of the right to self-determination through a referendum to be administered by the UN and OAU. The OAU Assembly endorsed the Committee’s self-determination, statehood and the refugee question conclusions a year later.

The referendum proposal was accepted, in principle at least, by the King of Morocco and the OAU Assembly proceeded to establish an implementation Committee to carry out the referendum process. Proposals made were all endorsed by the OAU Assembly, but Morocco refused any further cooperation in this regard. The OAU decided to recognize in November 1984 SADR as a member. Morocco resigned from the OAU in protest.

The UN had made a commitment towards Namibia, setting independence unconditionally as the ultimate legally required goal. However, when in 1986 the issue Western Sahara returned to the UN, the UN’s perspective on Western Sahara had shifted from the obligation to ensure statehood to committing to a referendum on self-determination that may include the freedom to choose independence.

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The UN appears to have been unable to bridge its ambiguity between recognizing its obligation towards Western Sahara as a former colony entitled to decolonization under UNGA Resolution 1514 and 1541 – a position enshrined in the ICJ Advisory Opinion an thus binding on the UN as a matter of law – and Morocco’s territorial claims, that refer to the Sahrawis as a minority population of Morocco. The UNSC has not explicitly declared Morocco an illegal occupier of Western Sahara, although the UNGA has declared Western Sahara to be occupied in a series of Resolutions.

**The way forward**

The creation of the Committee for South West Africa and the Council for Namibia that interceded in the governance of Namibia were distinguishing features of Namibia compared to Western Sahara that may have helped move Namibia to Independence. They were instrumental in using the weight of UN consensus to support the creation and implementation of the sanctions regime, making inroads in protecting Namibia’s resources, and acting as the UN’s authority within the territory in enforcing the framework for independence. Namibia’s political and militant organisations, were supported by the global solidarity movement against apartheid. It was the continuation of the armed struggle, the international community’s imposition of a sanction regime against South Africa, a relatively untied leadership in the struggle and sustained civil society pressure against apartheid that brought about Namibia’s independence. What the Namibian case shows is that for 20 years before actual independence, Namibians and their supporters had a strong legal strategy, combined with the political and the armed struggle that resolved many of the key issues allowing the non-rejectionist states to make statehood meaningful by the time actual independence came about. It certainly advanced the Namibian case that apartheid was universally rejected. Namibia’s right to independence was acted upon as a matter of legal right almost immediately after the mandate period ended.

Unlike in Namibia, the UNGA and UNSC approaches have been in conflict with regard to Western Sahara, with the UNSC disregarding the legal framework articulated by the UNGA and reinforced by the ICJ in the Advisory Opinions.

Western Sahara’s efforts marginally advanced in efforts to implement a referendum, the legal strategies were not defeated by permanent member vetoes at the UNSC in the Namibian case. In comparison to Namibia, however, the UNGA and the UNSC have neither jointly developed the actual foundation for recognition, nor the legal framework for Sahrawi independence. Moreover, in the Western Sahara case, there has been very limited effort to follow up on the Advisory Opinions, particularly with regard to the *erga omnes* obligation that in the Namibia case were critical to the sanctions regime, but have not been pursued with the community of states for sanctions against Morocco. Nor have there been efforts to obtain additional rulings from the ICJ to articulate what obligations states have to the recognition of statehood by both the ICJ and the UNGA. Although the UNSC has authorized MINURSO as a peacekeeping and monitoring body in Western Sahara, it has also failed to act on the body of UNGA resolutions concerning Sahrawi Independence and has seemingly back away from an initial commitment to independence to commitment to a **process** for a referendum to be agreed on by the conflicting parties.

- 8 -

Just as critical for Namibia’s successful independence bid was a unified UN strategy and recognition of territorial integrity were the factors of unified leadership and close collaboration with civil and UN actors. As in Namibia’s case SWAPO, the Namibian Council and civil actors have been working together to preserve rights and pursue joint strategies, the Sahrawi leadership has focused on building their internal governance, an effort that has garnered legitimacy internally and externally. However, developing a legal strategy, whether working to establish a UN Committee on Western Sahara or collaborating closely with NGOs trying to enforce boycotts against or divestment from corporations exploiting Western Saharan resources would enhance their efforts. Within the UN, the SADR might wish to use friendly states to establish a body equivalent to the Namibian Council or the Committee on South West Africa to advance Sahrawi claims in the UN machinery. There is undoubtedly enough support in the UNGA for Sahrawi rights to establish such an entity. More actions is needed to enforce the referendum process.

Economic pressure and diplomatic isolation helped bring an end to South African occupation of Namibia, the same can bring Morocco to agreement on the terms and eligible voters to the referendum demanded by the SADR. In the absence of UNSC action, the Sahrawi leadership can still generate greater legal legitimacy for non-recognition and non-cooperation with Moroccan actions through pressure in the other organs of the UN.

I mentioned earlier how crucial the moral, material and financial support of the OAU/AU had been for Namibians and their struggle for Independence. It is encouraging to read the most recent report of the Chairperson of the Commission on the Issue of Western Sahara, who in the strive to find a lasting solution amongst other emphasized that the tension observed on the ground demonstrated the urgency of finding a solution and the need for the AU to situate its efforts within the framework of an enhanced support to the United Nations led-efforts to increase their chances of success.

This gives hope.

I thank you.

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**Sahrawi Arab Democratic Republic**

**H.E. Mr. Mohamed Yeslem Beissat Deich**

**Minister – Councilor of the President of the**

**Saharawi Arab Democratic Republic**

**High-Level Side-event**

**Palais des Nations – Geneva, 11 September 2018**

**Three Decades for the Eradication of Colonialism:**

**Assessment and challenges for Western Sahara**

Excellencies, colleagues, distinguished guests, ladies and gentlemen,

First of all let me express my gratitude to the members of the Geneva Support Group, including the American Association of Jurists, for having organised this timely side-event and invited me to contribute to this discussion. I wish in particular to thank H.E. Ambassador da Silva for his coordination of the Group despite the very limited resources of His Permanent Mission.

- 2 -

Indeed, the implementation of the Right to Self-determination is the corollary of the end of a period of colonisation; it is the last step in the long march of a people to freedom. The implementation of the Right to self-determination is the preliminary condition to the enjoyment of all Human Rights, collective and individual.

That’s why the international community has enshrined the Right to Self-determination in Article 1 of the UN Charter as well as in Article 1 of the International Covenant on Civil and Political Rights and of the International Covenant on Economic Social and Cultural Rights.

I must recall here that in October 2015, in its Concluding Observation on the fourth periodic report of the Kingdom of Morocco to the Committee, the Committee “reiterates its concern about the failure to find a solution to the issue of the right to self-determination of the Non-Self-Governing Territory of Western Sahara. Likewise, the Committee remains concerned about the precarious situation, upon their return, of the Sahrawis refugees displaced by the conflict in Western Sahara”. And the Committee underscored that “It is also concerned that the Sahrawis’ right to participate in the use and exploitation of natural resources is still not respected”.

The Committee also stressed its deep concern “that the Berm, which is fortified by anti-personnel mines and was built by the State party to separate the Moroccan-controlled part of Western Sahara from the rest of the territory, is preventing the Sahrawis from fully enjoying their rights”.

Similarly, in November 2016, in its Concluding Observation on the sixth periodic report of the Kingdom of Morocco the Human Rights Committee stressed that it “remains concerned about: (a) the limited progress made in dealing with the issue of the self-determination of the people of Western Sahara; (b) reports that the State party is not taking all necessary measures to consult the people of Western Sahara about the development of the natural resources of the Western Sahara; and (c) the presence of the sand wall, also known as the “Berm”, which limits the freedom of movement of the people of Western Sahara given the very few crossing points that are open to civilians and the presence of landmines and other explosive remnants of war along the Berm that endanger the lives and safety of the communities located in the vicinity”.

- 3 -

The concerns expressed by the Committees in charge of the implementation of the firsts and still considered as the main International Covenants on Human Rights, are closely linked to the situation of colonial domination to which it is subject the Non Self-Governing Territory of Western Sahara, which is the only one being under an illegal military occupation of a third county.

For those who may don’t know the historical background, I will briefly remember that the Territory of Western Sahara was under Spanish colonial rule since late 19th century and that in 1963 the UN General Assembly included it in the list of Non-Self-Governing Territories to which UN General Assembly resolution 1514 applies. It is worth to remember that with resolution 1514, the General Assembly adopted the Declaration on the granting of independence to colonial countries and peoples.

In 1972, Spain committed itself to organize a referendum, but it never kept its promise.

On May 1973, the Polisario Front was founded in order to combat the colonial rule. In November 1975, the Kingdom of Morocco invaded militarily the Non-Self-Governing Territory of Western Sahara which was still under the mandate of Spain, as Administering Power.

On 27 February 1976, following the announcement by Spain that it had terminated its presence in Western Sahara, the Polisario Front declared the establishment of the Sahrawi Arab Democratic Republic, which was admitted in February 1982 as member of the Organisation of African Unity. The Sahrawi Arab Democratic Republic is a founding member of the African Union that has replaced the former Organisation of African Unity.

Nevertheless, the UN has still to recognize our Republic and therefore the decolonisation process has to be finalized. Following 13 years of war, during which, the Occupying power has committed a number a serious violations of the Geneva Conventions, some of which may amount to war crimes and crimes against humanity, a ceasefire was agreed between the Polisario Front and the Kingdom of Morocco. In 1991, the Security Council created the UN Mission for the Referendum in Western Sahara (MINURSO).

- 4 -

Despite the efforts deployed by the various diplomats mandated by the United Nations, it has still not been possible to hold the referendum on self-determination and independence in Western Sahara. Let me put it clearly: since the creation of the MINURSO, the Kingdom of Morocco has speared no efforts to impede the organization of the referendum and recently declared, on one hand, that the mandate of the MINURSO is not anymore to organize the referendum and, on the other, that Western Sahara should not be anymore listed as Non-Self-Governing Territory.

The Polisario Front strongly supports the efforts of the actual Special Envoy of the Secretary-General for Western Sahara, President Horst Köhler, and hopes that very soon the negotiations with the Occupying Power would be resumed in good faith and without pre-conditions.

But the responsibilities of the UN and of its member States are not limited to the MINURSO’s and the SG's Special Envoy efforts.

The annually resolution adopted by consensus by the UN General Assembly on “Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples” urges all States, directly and through their action in the specialized agencies and other organizations of the United Nations system, to provide moral and material assistance, as needed, to the peoples of the Non-Self-Governing Territories and requests the Secretary-General, the specialized agencies and other organizations of the United Nations system to provide economic, social and other assistance to the Non-Self-Governing Territories.

In addition, the annually resolution adopted by consensus by the UN General Assembly on “Economic and other activities which affect the interests of the peoples of the Non-Self-Governing Territories” calls upon all Governments that have not yet done so to take, in accordance with the relevant provisions of General Assembly resolution 2621 (XXV) of 12 October 1970, 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.

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Furthermore the General Assembly invites all Governments and organizations of the United Nations system to take all possible measures to ensure that the permanent sovereignty of the peoples of the Non-Self-Governing Territories over their natural resources is fully respected and safeguarded in accordance with the relevant resolutions of the United Nations on decolonization.

I should also mention that the annually resolution adopted by consensus by the UN Economic and Social Council entitled “ Support to Non-Self-Governing Territories by the specialized agencies and international institutions associated with the United Nations” urges those specialized agencies and organizations of the United Nations system that have not yet provided assistance to Non-Self-Governing Territories to do so as soon as possible and requests the specialized agencies and other organizations and bodies of the United Nations system to strengthen existing measures of support and to formulate appropriate programmes of assistance to the remaining Non-Self-Governing Territories. It also requests the specialized agencies and other organizations of the United Nations system concerned to provide information on, inter alia, the Illegal exploitation of the marine and other natural resources of the Territories.

Regrettably, no such report has been presented yet by any specialized agency to any UN organ. Likewise, the Office of the High-Commissioner for Human Rights never formulated an appropriate programme of assistance to the Non-Self-Governing Territories. I wish to seize this opportunity to call upon the OHCHR to submit to the Polisario Front a proposal for a programme of technical cooperation and capacity building.

Beside the failure to comply with the obligations arising from those resolutions, I should also underline the deficiencies in the implementation of the Plan of Action for the International Decade for the Eradication of Colonialism adopted by the UN General Assembly.

The Plan of Action calls the international community to enable the peoples of Non-Self-Governing Territories to exercise their inalienable right to self-determination and decide their future political status with complete knowledge and awareness of the full range of political options available to them, including independence. Regrettably, France continues to support the Kingdom of Morocco in its illegal occupation of Western Sahara.

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The Plan of Action also calls member States to consider adopting at the national level such measures, including legislation, that would (a) discourage all actions and activities, commercial or otherwise, that could be prejudicial to the exercise of the right to self-determination and independence by the peoples of the remaining Non-Self-Governing Territories; and (b) promote full respect for the human rights of peoples living under foreign domination and facilitate their recourse to judicial proceedings in order to gain economic and social restitution. Regrettably, the EU Commission has been asked by the Council to circumvent the judgments of the European Court of Justice that explicitly exclude the Territory of Western Sahara and its adjacent waters from the economic and commercial agreements concluded between the European Union and the Kingdom of Morocco.

The Plan of Action also calls on the Special Committee, with the cooperation of the administering Powers, should make every effort to facilitate and encourage the participation of representatives of the Non-Self-Governing Territories in regional and international organizations, as well as in the specialized agencies of the United Nations system, the Special Committee itself and other United Nations decolonization bodies.

I wish to stress here that Western Sahara is the only Non Self-Governing Territory that has not an internationally recognized Administering Power reporting to the General Assembly in conformity with article 73 of the Charter. Western Sahara is also the only Non Self-Governing Territory which is under foreign occupation. Therefore the United Nations has a particular responsibility over Western Sahara.

Regrettably, although the Polisario Front is recognized since 1979 by the General Assembly as the representative of the people of Western Sahara, it has never received an invitation from a UN system organisation to participate to a conference. For instance, the Polisario Front has never received an invitation from the Human Rights Council to participate to its meetings.

In conclusion, I wish to stress that while the UN General Assembly and its Economic and Social Council adopt meaningful resolutions in relation to the Non Self-Governing Territories, there is an evident failure in the application of those resolutions.

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Approaching the end of the third International Decade for the Eradication of Colonialism we have all, collectively, to ask ourselves why there are still 17 Non Self-Governing Territories in the Twenty-first century? Can the international community as whole continue to accept the role played by the western permanent members of the Security Council in blocking the eradication of colonialism?

On behalf of the Polisario Front and of the Sahrawi Arab Democratic Republic, I call upon all UN member states to take all appropriate measures in order to implement the relevant resolutions of the UN General Assembly and Economic and Social Council and to stand firmly for the eradication of colonialism.

I call upon the organisations of the UN system, including the Human Rights Council, to open their doors to the Polisario Front and to allow their representatives to participate to its debates.

Thank you very much.

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**Side-event de Haut-Niveau à la 39ème session du**

**Conseil des Droits de l’Homme**

**Genève, le 11 Septembre 2018**

**Trois Décennies pour l’Eradication du Colonialisme:**

**bilan et perspectives au Sahara occidental**

**Dr. Leonardo R. Pérez**

Excellences, Mesdames et Messieurs,

Nous sommes ici, entourés des membres et des sympathisants du groupe de soutient pour le Sahara Occidental. La décolonisation du Sahara Occidental est un problème d’abord magrébin et africain, ce qui n’empêche pas de compter parmi les membres du groupe de soutient des Etats du continent américain: **La Bolivie, le Cuba, L’Equateur, le Nicaragua, le Venezuela**…espérons que le nombre des pays latino-américains va s’agrandir, en vue des bonnes pratiques de décolonisation qui ont eu lieu sur le continent.

Pour faire honneur aux membres latino-américains du Groupe, étant moi-même latino-américain, je vais me référer à la décolonisation prenant comme exemple le continent américain, sans pour autant délaisser la décolonisation du Sahara Occidental, le sujet qui nous réunit ici. Mais, permettez, avant de parler du peuple sahraoui sous occupation, ancien sujet colonial espagnol, de me référer à d’autres sujets coloniaux espagnols, et qui sont le sujet colonial par excellent : les peuples autochtones.

Les peuples autochtones sont le sujet colonial par excellence, parce que, sans colonisation, il n’y aurait pas des peuples autochtones, ça, au moins, dans le cas américain. Pour appuyer cette affirmation, je vais utiliser le travail effectué à l’ancienne sous-commission de droits humains, par le diplomate cubain Alfonso Martinez-Cobo. Dans son rapport sur la discrimination des peuples autochtones, basé surtout dans l’expérience latino-américaine, il a posé quatre critères, deux critères objectifs et deux critères subjectifs, pour tenter de définir ce qui est un peuple autochtone.

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Les deux critères objectifs supposent : 1. L’existence d’un peuple avant l’arrivée des colonisateurs sur un territoire ; et 2. La continuation existentiel de ce peuple avec une culture différente au sein des nouveaux États issus de la colonisation, où ce peuple occupe une place sous-alterne (d’ici le fait qu’on pouvait parler du « quatrième monde » pour faire référence aux peuples autochtones).

Avec ce sujet colonial ainsi partiellement définit, il y a aussi une voie de décolonisation qui se dessine. Comme il est dit, ces sujets coloniaux, les peuples autochtones occupent une place sous-alterne dans l’Etat et la société. Abandonner cette place, intériorisée au point de vouloir cacher l’appartenance à un peuple autochtone, voilà en quoi consiste la décolonisation dans ce cas-là. Presque partout en Amérique latine, nous avons eu des réformes constitutionnelles qui ont cherché à corriger la situation de discrimination à l’égard des peuples autochtones, comme une manière aussi de moderniser l’Etat et laisser dans le passé l’indéniable origine coloniale des Etats dans la région. Ces réformes ont été l’expression des mouvements autochtones organisés.

Comme je le dis, « peuple autochtone » est une catégorie coloniale. C’est pourquoi ces peuples ont cherché à se débarrasser de ce label colonial et, comme une partie de récupération de leur langues et cultures, ont remis dans l’espace publique les noms qu’ils se donnait avant la colonisation: Au Pérou, le peuple ashaninka a laissé d’un côté la dénomination de peuple «campa» ; en Colombie, l’ainsi nommé peuple « paez » a récupéré son ancien nom de «peuple nasa» ; dans les deux cas, « ashaninka » et « nasa » signifie personne. La récupération de la langue et avec elle des dénominations précoloniales des peuples originaires, c’est une manière de renoncer à la catégorisation coloniale comme peuple autochtones. Bien sûr, nous avons aux Nations Unies adoptée la Déclaration sur les droits des peuples autochtones, ce qui est un fait notable, mais il faut tenir en compte que «autochtone» ici est un défaut de langage, nécessaire pour englober la diversité des peuples qui ont souffert la colonisation et qui habitent maintenant à l’intérieur des Etats post-coloniaux. Laissez-moi juste mentionner deux cas nationaux qui servent à illustrer cette décolonisation en Amérique Latine, avant de nous référer davantage aux peuples des territoires non-autonome, un sujet primordial dans les résolutions et rapports de l’ONU sur les trois décennies pour l’éradication du colonialisme.

Dans l’Etat plurinational de Bolivie, dont le titre officiel reconnait l’existence des différentes nations autochtones à son intérieur, la récupération identitaire et culturel a passé par une reconnaissance du caractère sacré d’anciens territoires, et des savoirs et des spécialistes lié à ces territoires, spécialistes appelés «amautas».

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Une partie de ce savoir a été récupéré grâce à la revalorisation du rapport des nations autochtones de la Bolivie avec leurs plantes sacrées, comme le cactus appelée «San Pedro», « Saint-Pierre », le saint que dans la tradition catholique est celui qui ouvre les portes du paradis. Le « aguacoya» comme est aussi nommé ce cactus, a ouvert les portes de la connaissance de soi au peuple aymara. Nous avons eu l’occasion, lors de la célébration du 12 octobre l’année passée, « jour de la décolonisation» en Bolivie, anciennement connu par le nom discriminatoire de «jour de la race», de partager avec un amauta ce processus de décolonisation, ici, au Palais des Nations. Je pense que l’utilisation de plantes à des fins d’auto-connaissance n’est pas étranger à plusieurs des représentants africains présents dans la salle, puisque vous avez sur une partie de votre continent la plante appelé «iboga».

La constitution de 1999 du Venezuela, un autre membre de ce Groupe de Soutient, dans son troisième titre, chapitre VIII, reconnait les droits des peuples autochtones; quelque chose qui est vraiment à souligner dans ce chapitre, est que l’Etat s’engage à protéger la propriété intellectuelle des connaissances et ressources génétiques des peuples autochtones, et interdit la création des patentes sur ces connaissances. Là, c’est un point qui est à suivre dans le reste du continent, et qui peut-être pourraient intéresser les pays africains, qui luttent à l’heure actuelle à l’OMPI (Organisation Mondial de la Propriété Intellectuelle) pour empêcher la bio-piraterie sur leurs territoires. La colonisation n’est pas seulement l’extraction des ressources naturelles d’un territoire colonisé sans le consentement des peuples concernés ; c’est aussi l’extraction de connaissances et de l’information génétique de ces mêmes territoires, sans que le « transfert technologique » servent de consolation aux pays qui perdent des éléments indispensables à leur développement au XXIème siècle.

Jusqu’ici, nous avons pris les peuples dits « autochtones » comme un sujet qui pourrait être décolonisé à l’intérieur des Etats postcoloniaux. Or, différents types de sujet coloniaux donnent lieu à différentes voies de décolonisation. il y a des peuples qui ne peuvent pas se décoloniser sans exercer son droit à l’indépendance. Ici je ne peux pas ignorer le fait qu’il y a eu et il y a des représentants des peuples autochtones qui cherchent à exercer aussi ce droit, en dehors donc des frontières étatiques reconnues actuellement en Amérique. Par le passé, on a eu le « katarisme» en Bolivie, qui voulait rétablir un Etat inspiré duTahuantinsuyo pré-hispanique. En 2015, nous avons eu un lobby au Mécanisme d’Experts en Droits des Peuples Autochtones, qui es peut-être toujours d’actualité, dont le but était d’inscrire le peuple Rapanui au Chili dans la liste des territoires non-autonomes; ici, au Conseil de Droits Humains, nous avons un lobby qui cherche à faire de même avec les iles de Hawaï aux Etats-Unis, qui faisait partie de cette liste jusqu’en 1959.

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En Afrique on a le peuple bubi, dans l’île de Bioko au Quinée Equatoriale, qui a fait partie de la liste de territoires non-autonomes sous le nom de l’île de Fernando Poo jusqu’en 1969, pour laquelle il y a aussi un lobby qui cherche à la réintégrer à cette liste.

Je ne vais pas discuter maintenant sur la légalité ou la légitimité de ces projets, à moins que vous le vouliez dans les questions, ou dans une autre communication, parce que c’est un grand sujet ; mais le fait de constater l’existence de ces projets m’est outil en ce moment pour montrer qu’en plus des peuples autochtones, il y a d’autres catégories des peuples, comme le peuples des territoires sujets à a des puissances administratives ou à des puissances occupantes. La différence entre ces derniers peuples et les peuples autochtones, serait que les premiers sont plus près à exercer leur droit à l’indépendance, alors que dans le cas des peuples autochtones cette revendication est rare, et, dans les cas des Rapanui, ils cherchent justement à changer de statut pour obtenir cette fin. Passer par la voie du Comité de 24 et penser à obtenir le statut d’un territoire non-autonome ce n’est pas obligatoire, bien entendu, pour prétendre à l’indépendance ; nous avons le peuple kurde en Iraq, où, des dirigeants de ce peuple a décidé, ça fait une année, à quelques jours près, d’organiser un referendum d’autodétermination, alors qu’en Catalogne soufflaient les mêmes vents, avec les résultats que nous connaissons. Tout-de-même, obtenir le statut de territoire non-autonome est possiblement vu par les acteurs qui s’engagent dans cette voie, comme une manière de s’abriter sous la promesse d’avoir un « développement progressif de leurs libres institutions politiques» (Charte des Nations Unies, art. 73).

Il s’agit d’une promesse qui n’a pas été tenue pour le cas du Territoire Non-Autonome du Sahara Occidental, abandonné par la puissance administrante et puis tombé sous la domination d’une puissance occupante, comme vous tous le savez. Dans ce cas, la décolonisation passe par le respect du droit à l’indépendance, si tel est la volonté du peuple sahraoui. Ce peuple a résisté les efforts de la puissance occupante afin de l’acculturer, moyennant un établissement entièrement illégal de population civile de la puissance occupante. Le peuple sahraoui résiste aussi avec ces institutions politiques dans l’exil. Forte d’une grande diplomatie, ces derniers années le gouvernement de la République Arabe Sahraoui Démocratique a obtenu des grands succès sur le plan international. Cela ne peut nous faire oublier que ça été le cas depuis les années ‘70, en raison de la justice qui support la cause sahraouie. L’ancêtre de ce Conseil, la Commission des droits humains, a régulièrement approuvé, parfois par consensus, tout une série de résolutions sur le Sahara Occidental au long des années 1980 jusqu’en 2004. Dans ces résolutions, il était de rigueur rappeler le droit inaliénable de tous les peuples à l’autodétermination et à l’indépendance, en accord avec les principes de la Déclaration sur l’indépendance de pays et peuples coloniaux (résolution 1514).

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Ce langage est celui que nous retrouvons dans les résolutions et rapports sur les décennies pour l’éradication du colonialisme. Si nous prenons sérieusement ce langage, la réussite des trois décennies sur la décolonisation, et celle qui viendra éventuellement en 2020, passe par la décolonisation du Sahara Occidental.

Pour terminer, après tous ces constats, je voudrais aborder la question de qu’est-ce que le Conseil des Droits Humains pourrait faire pour appuyer les processus de décolonisation. Il nous faut d’abord constater qu’il a un certain désordre dans les sessions du Conseil. Par-là, je veux dire que tout ce qui est en rapport avec les droits des peuples, le droit à l’autodétermination, les droits qui sont bafoués par la colonisation, est éparpillé un peu partout dans l’agenda du Conseil. Nous avons un certain ordre pour ce qui concerne les peuples autochtones, et même ce cas inclut, les déclarations des acteurs non-étatiques portant sur les peuples en général sont faites sous des différents points de l’agenda du Conseil, surtout le surchargé point 3. Au temps de la Commission des droits humains, il y avait un point de l’agenda permanent appelé «le droit des peuples à l’autodétermination et son application aux peuples sous domination coloniale  ou occupation étrangère ». Sous ce point était traités autant l’occupation de Palestine comme l’occupation du Sahara Occidental, ou l’invasion soviétique de l’Afghanistan. Aujourd’hui on a le point 7, qui focalise toute l’attention sur l’occupation de la Palestine, mais ne permet pas de traiter d’autres cas de violation de l’autodétermination des peuples. Alors la question serait de savoir comment faire aujourd’hui pour créer un espace au Conseil qui permette de traiter les problèmes liés à l’autodétermination ? Peut-être que l’existence de ce groupe de soutient est déjà une partie de la réponse à ce problème.

Si nous lisons les rapports du Secrétaire général et nous les comparons avec les résolutions concernant l’éradication du colonialisme, nous notons qu’il n’y a pas un engagement du Haut-Commissariat avec les territoires non-autonomes. Depuis 2002, le Secrétaire général demande au Haut-Commissariat aux Droits de l’Homme de présenter un rapport au Comité spécial pour la décolonisation illustrant les actions entreprises pour appuyer les peuples des Territoires non-autonomes en relation avec l’application de la résolution 1514 (XV) sur « L’octroi de l’indépendance aux peuples et pays coloniaux » : le Haut-Commissariat n’a jamais présenté de rapport et n’a jamais mis en place aucun programme spécifique pour les peuples des Territoires non-autonomes. Peut-être que promouvoir la coopération technique sous l’item 10 du Conseil avec les territoires non-autonomes pourrait être une façon de motiver le Haut-Commissariat à participer de l’éradication du colonialisme.

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Tout en reconnaissant l’importance de Territoires non-autonomes, il serait aussi possible d’inclure d’autres acteurs dans l’éradication du colonialisme, comme les minorités et les peuples dits «minoritaires», par exemple les kurdes au Moyen-Orient. Finalement, les rapports du Secrétaire général pourraient prendre en compte l’expérience de décolonisation latino-américaine, dont je vous ai parlé.

Je vous remercie pour votre attention.

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