The NGOs Geneva Support Group for the Protection and Promotion of Human Rights in Western Sahara (175 member-organisations) welcomes the initiative of the Secretary General’s Personal Envoy for Western Sahara, H.E. Mr. Horst Köhler, and supports Him in his efforts to hold a negotiations’ table with the Kingdom of Morocco and the Polisario Front, the two parties to the conflict in Western Sahara that lasts since 1975.

The NGOs Geneva Support Group for the Protection and Promotion of Human Rights in Western Sahara also welcomes the fact that the two neighbouring countries, Algeria and Mauritania, in their capacity as observers, will attend these negotiations, insofar as they can support the peaceful process of conflict resolution.

The NGOs-GSGPPHRWS expresses its concern about some concept inserted in the Security Council’s resolutions of 2018 concerning the conflict in Western Sahara (S/RES/2414 and S/RES/2440) and deems necessary to recall some fundamental principles of international law and decisions taken by different organs of the United Nations and the African Union.

The international legal status of Western Sahara

On 11 December 1963, in adopting resolution 1956 (XVIII), the UN General Assembly (UNGA) integrated Spanish Sahara to the list of Non Self-Governing Territories (NSGT). The UN General Assembly subsequently invited the Administering Power (Spain) to determine at the earliest possible date the procedures for the holding of a referendum with a view to enabling the indigenous population of the Territory to exercise freely its right to self-determination (UNGA Res. 2229 – XXI).

Since its inclusion in the list of the NSGT, Western Sahara is under the scrutiny of the UN Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in UNGA resolution 1514 (XV).
On 26 February 1976, Spain informed the UN Secretary General that as of that day it had terminated its presence in Spanish Sahara and relinquished its responsibility over the Territory. Subsequently, the United Nations referred to the NSGT as Western Sahara, which became, and still is today, the only NSGT that has not an internationally recognized Administering Power.

Since November 1975, Western Sahara is also the only NSGT under illegal military occupation.

**The international legal status of the Kingdom of Morocco in Western Sahara**

On 16 October 1975, the International Court of Justice (ICJ) released its Advisory Opinion determining that the materials and information presented to the Court do not establish any tie of territorial sovereignty between the territory of Western Sahara and the Kingdom of Morocco. The very same day, King Hassan II of Morocco announced the launching of the «Green march» in order “to recover the integrity of the Kingdom’s territory”, thus disregarding the conclusions of the ICJ.

On 6 November 1975, the Kingdom of Morocco invaded Western Sahara militarily and organized a transfer of thousands of Moroccan people into the Non-Self-Governing Territory. The same day, the UN Security Council adopted resolution 380, deploiring the holding of the march and calling upon Morocco immediately to withdraw from the Territory of Western Sahara all the participants to the march.

Later on, the Kingdom of Morocco, while maintaining heavy military forces and financially supporting the transfer of an increasing number of Moroccan civil settlers, has illegally annexed the majority of Western Sahara and illegally organizes legislative election of representatives of / from Western Sahara to its national Parliament.

Throughout the years, the Kingdom of Morocco has shown no will to end the occupation of Western Sahara and has put in place the infrastructure to illegally plunder the natural resources of the Non-Self-Governing Territory with the complicity of third countries and private companies, some of which belong to the Moroccan Royal family.

The breach of four general principles of international law (non-annexation / non permanent or indefinite occupation / preservation of the interests of the people under occupation / administration of the occupied territory in good faith) leads to the conclusion that the occupation of Western Sahara by the Kingdom of Morocco is illegal.
The Principle of Bona fides in International Law

For many years, the UN Security Council is calling upon the parties to resume negotiations under the auspices of the Secretary-General without preconditions and in good faith.

Good faith is a central principle of public international law which has been included in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations adopted by the UN General Assembly in October 1970 (resolution 2625 – XXV).

In view of the content of the King of Morocco's annual speeches delivered on 6 November commemorating the launch of the Green march in Western Sahara, it is hardly difficult to believe that the Kingdom of Morocco is engaging in negotiations without preconditions and in good faith.

Although the Kingdom of Morocco accepted the Settlement Plan presented by the UN Secretary General in August 1988, as well as the Houston Agreements in September 1997 and the Peace Plan for Self-determination for the People of Western Sahara (Baker Plan) that the UN Security Council defined as the “optimum political solution” (S/RES/1495), it has spared no efforts in order to prevent the process from being finalized.

Recent declarations of the Permanent Representative of the Kingdom of Morocco to the UN in New York concerning the fundamental mandate of the MINURSO and the withdrawal of Western Sahara from the list of Non Self-Governing Territories also seriously challenge the good faith with which the Kingdom engages in negotiations.

Furthermore, since the Kingdom of Morocco has joined the African Union in January 2017, it has spared no efforts to gain the suspension or the eviction of the Sahrawi Arab Democratic Republic from the Union, in contradiction with articles 3(b), 4(a), 4(b) and 4(f) of the African Union Constitutive Act.

The UN and its Member States responsibilities

Since February 1976, Western Sahara has not an internationally recognized Administering Power, therefore no one present an annual report in accordance with article 73 of the UN Charter. Considering also that Western Sahara is the only NSGT under foreign occupation, the United Nations bear a primary responsibility over the Territory and the UN Secretary General should provide this kind of report.

In its annually adopted by consensus resolution on the “Question of Western Sahara” (last one A/RES/72/95 of 7 Dec. 2017) the UNGA reaffirms the responsibility of the United Nations towards the people of Western Sahara.
In its annually adopted by consensus resolution on “Support to Non-Self-Governing Territories by the specialized agencies and international institutions associated with the United Nations” (last one E/RES/2018/18) the UN Economic and Social Council reaffirms that the recognition by the General Assembly, the Security Council and other United Nations organs of the legitimacy of the aspirations of the peoples of the Non Self-Governing Territories to exercise their right to self-determination entails, as a corollary, the extension of all appropriate assistance to those peoples. The UN Economic and Social Council also 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.

Regrettably no such programmes has been implemented in Western Sahara (both sides of the Berm and in the refugees’ camps), notably by the Office of the High-Commissioner for Human Rights.

In its annually adopted by consensus resolution on “Economic and other activities which affect the interests of the peoples of the Non-Self-Governing Territories” (last one A/RES/72/92 of 7 Dec. 2017) the UNGA reaffirms its concern about any activities aimed at the exploitation of the natural resources that are the heritage of the peoples of the Non-Self-Governing Territories and 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.

The inalienable right of the Sahrawi people to self-determination

In its annually adopted by consensus resolution on “Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples” (last one A/RES/72/111 of 7 Dec. 2017), the UNGA affirms its support for the aspirations of the peoples under colonial rule to exercise their right to self-determination, including independence.

In its annually adopted by consensus resolution on the “Question of Western Sahara” (last one A/RES/72/95 of 7 Dec. 2017) the UNGA reaffirms the inalienable right of all peoples to self-determination and independence as well as the responsibility of the United Nations towards the people of Western Sahara.
Conclusion and recommendations

After 43 years of illegal military occupation that has led to a number of gross violations of human rights as well as serious and continuous violations of the Fourth Geneva Convention of 1949 and 30 years after the acceptance by the two parties of the Settlement Plan proposed by the UN Secretary-General, the time has come for the UN and its member States to fully assume their responsibility towards the people of Western Sahara in accordance with International Law, the UN Charter and the resolutions adopted by different organs in relation to Non Self-Governing Territories and, in particular, to Western Sahara.

In this context, by no means may the presence of Sahrawi people and its legal representative, the Polisario Front, in Western Sahara be considered as destabilizing actions; indeed it is the illegal military occupation that has to cease.

The mandate of each National Human Rights Institution is limited to the territory of its own country; therefore the Security Council cannot welcome the role played by the Moroccan National Council on Human Rights Commissions operating in Dakhla and Laayoune, which only be considered as political instruments of the Occupying Power.

Considering the large number of gross violations of human rights as well as the serious and continuous violations of the Fourth Geneva Convention of 1949 committed by the Occupying Power, the Kingdom of Morocco, in the occupied part of Western Sahara, as well as the continuous and serious violations of the fundamental rights of the Sahrawi refugees as a direct consequence of 43 years of illegal military occupation of their Territory, the following measures should be taken in a confidence building process:

- the inclusion of a Human Rights Monitoring chapter in the MINURSO mandate in order to develop and implement independent and credible measures to ensure full respect for human rights;
- the periodic dispatching of a technical mission by the UN Office of the High-Commissioner for Human Rights to Western Sahara (both sides of the Berm) and to the refugees’ camps;
- the implementation by the UN Office of the High-Commissioner for Human Rights of a specific programme of Technical cooperation and capacity building with the Polisario Front.

In conformity with International Law, the UN Charter and the resolutions adopted by different organs of the UN in relation to Non Self-Governing Territories a just, lasting, and mutually acceptable political solution, which will provide for the self-determination of the people of Western Sahara has to lead to the holding of a referendum with a view to enabling the indigenous population of the Territory to exercise freely its right to self-determination: there are no possibilities, for such a referendum, to exclude the option of independence.

**********
Signatories

Acción Solidaria Aragonesa (ASA), Adala UK, Afrika Kontakt, American Association of Jurists (AAJ), Arabako SEAD en Lagunen Elkartea, Asociación de Amigos y Amigas de la R.A.S.D. de Álava, Amal Nanclares, Asociación Amal Centro Andalucía, Asociación Amigos del Pueblo Saharaui del Campo de Gibraltar (FANDAS), Asociación Amigos del Pueblo Saharaui de Toledo, Asociación de Amistad con el Pueblo Saharaui de Albacete, Asociación ARDI HURRA, Asociación Asturiana de Solidaridad con el Pueblo Saharaui, Asociación Canaria de Amistad con el Pueblo Saharaui (ACAPS), Asociación de la Comunidad Saharaui en Argon (ACSA), Asociación de Discapacitados Saharauis, Asociación Ecuatoriana de Amistad con el Pueblo Saharaui (AEAPS), Asociación Española por el Derecho Internacional de los Derechos Humanos (AEDIDH), Asociación de Familiares de Presos y Desaparecidos Saharauis (AFAPREDESA), Asociación por la Justicia y los Derechos Humanos, Asociación de Médicos Saharaui en España, Asociación Navarra de Amigos y Amigas de la R.A.S.D. (ANARASD), Asociación Navarra de Amigos y Amigas del Sahara (ANAS), Asociación Pro Derechos Humanos de España (APDHE), Asociación Profesional de Abogados Saharauis en España (APRAE), Asociación por la Protección de los Presos Saharaui en las Cárcel Marroqui, Asociación Riojana de Amigos de la R.A.S.D., Asociación Saharaui de Control de los Recursos naturales y la Protección del Medio Ambiente, Asociación Saharaui para la Protección y Difusión del Patrimonio cultural Saharaui, Asociación Saharaui contra la Tortura, Asociación de Saharauis en Alicante, Asociación de Saharauis en Ávila, Asociación de Saharauis en Bal, Asociación de Saharauis en Fuerteventura, Asociación de Saharauis en Jerez de la Frontera, Asociación de Saharauis en Lebrij, Asociación de Saharauis en Navarra, Asociación de Saharauis en Tenerife, Asociación de Saharauis en Valdepeñas, Asociación Um Draiga de Zaragoza, Asociación Venezolana de Solidaridad con el Sáhara (ASOVessa), Asociación de Víctimas de Minas (ASAVIM), Asociación de Zamur, Associació d'Amics del Poble Sahrauí de les Iles Balears, Association des Amis de la RASD (France), Association for the Monitoring of Resources and for the Protection of the Environment in Western Sahara (AMRPENWS), Association de la Communauté Sahraouie en France, Association Culture Sahara, Association culturelle Franco-Sahraouie, Association des Femmes Sahraouies en France, Association Mauritanienne pour la Promotion du Droit, Association Mauritanienne pour la Transparence et le Développement – ATED, Association pour un Référendum libre et régulier au Sahara occidental (ARSO), Association Sahraouie des Victimes des Violations Graves des Droits de l’Homme Commises par l’État Marocain (ASVDH), Association des Sahraouis de Bordeaux, Associazione Nazionale di Solidarietà con il Popolo Saharaui, Bentili Media Center, Bureau International pour le Respect des Droits Humains au Sahara occidental (BIRDHSO), Campaña Saharaui para la sensibilización sobre el peligro de Minas (SCBL), Cantabria por el Sáhara, Centro Brasileño de Solidaridad con los Pueblos y Lucha por la Paz, CEBRAPAZ, Centro de Documentación en Derechos Humanos “Segundo Montes Mozo S.J.” (CSMM), Centro Saharaui por la Salvaguardia de la Memoria, Colectivo Saharaui de Defensores de Derechos Humanos (CODESA), Colectivo Saharaui en Estepona, Colectivo Saharaui en Gipuzkoa, Colectivo Saharaui en Jaén, Colectivo Saharaui en Lanzarote, Comisión Ecuemática de Derechos Humanos de Ecuador (CEDHU), Comisión General Justicia y Paz, Comisión Media Independientes, Comisión Nacional de los Derechos Humanos de la República Dominicana (CNDH-RD), Comisión Nacional Saharaui por los Derechos Humanos (CONASADH), Comité d’Action et de Réflexion pour l’Avenir du Sahara Occidental, Comité de Apoyo por el Plan de Paz y la Protección de los Recursos Naturales en el Sáhara Occidental, Comité de Defensa del Derecho de Autodeterminación (CODAPSO), Comité de Familiares de los 15 Jóvenes Secuestrados, Comité de Familiares de Mártires y Desaparecidos, Comité de Familiares de los Presos Políticos Saharauis, Comité de Protección de los Defensores Saharauis – Freedom
NGOs enjoying UN - ECOSOC Status