

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

*Members of the*

## *Geneva Support Group for Western Sahara*

*Invite all delegations to the 40<sup>th</sup> session of the UN Human Rights Council  
to a High-Level side-event on*

### *The European Union and its member States’ Responsibility over the decolonization process of Western Sahara*

*Wednesday 27<sup>th</sup> February 2019 – 1:30 to 3:00 PM – Room XXIV*

#### *Panelists:*

*H.E. Mr. Luwellyn Landers – Deputy Minister of the South African Department of  
International Relations and Cooperation*

*H.E. Amb. Taleb Omar Abdelkader – Sahrawi Arab Democratic Republic*

*Prof. Dr. Klaus Buchner – Member of the European Union Parliament (Germany)*

*Prof. Pål Wrange – Professor of International Law, University of Stockholm*

*Mr. Jean-Pierre Tuquoi – Former responsible for North Africa at “Le Monde”*

*Mr. Erik Hagen – Co-author of “Profit over Peace in Western Sahara”*

#### *Moderator:*

*Mr. Gianfranco Fattorini – American Association of Jurists (AAJ)*

*Oriental buffet will be served before the meeting*

*English / French interpretation*

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

*Membres du*

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

*Invitent toutes les délégations à la 40<sup>ème</sup> session du Conseil des droits de l'Homme  
à un Side-event de Haut-Niveau*

# *La responsabilité de l'Union Européenne et de ses Etats membres dans le processus de décolonisation au Sahara occidental*

*Mercredi 27 Février 2019 – 13:30 à 15:00 – Salle XXIV*

### *Intervenants:*

*S.E. M. Luwellyn Landers – Vice-Ministre, Département des Relations Internationales et  
de la Coopération – Afrique du Sud*

*S.E. Amb. Taleb Omar Abdelkader – République Arabe Sahraouie Démocratique*

*Prof. Dr. Klaus Buchner – Membre du Parlement de l'Union Européenne (Allemagne)*

*Prof. Pål Wrange – Professeur de Droit International, Université de Stockholm*

*M. Jean-Pierre Tuquoi – Ancien responsable pour l'Afrique du Nord à "Le Monde"*

*M. Erik Hagen – Co-auteur de "Profit over Peace in Western Sahara"*

### *Modérateur:*

*M. Gianfranco Fattorini – Association Américaine de Juristes (AAJ)*

*Un buffet oriental sera servi avant l'événement*

*Interprétation français / anglais*



**OPENING REMARKS BY MR LUWELLYN LANDERS, MP  
DEPUTY MINISTER OF INTERNATIONAL RELATIONS AND  
COOPERATION OF THE REPUBLIC OF SOUTH AFRICA**

**GENEVA - 27 FEBRUARY 2019**

**THE EUROPEAN UNION AND ITS MEMBER STATE'S  
RESPONSIBILITY FOR THE DECOLONISATION OF  
WESTERN SAHARA**

Moderator,

Excellencies,

Fellow panellists,

Distinguished guests,

Ladies and gentlemen,

It is a great pleasure and privilege for me to be here today to deliver opening remarks in my capacity as Deputy Minister for International Relations and Cooperation of the Republic of South Africa.

Permit me to re-state that my country and its people stand resolutely in support of the freedom struggle of the Sahrawi people and their right to self-determination. For South Africa this principled support is cast in stone.

We are all well aware and welcome the many legal opinions and judgements of the United Nations, the International Court of Justice, the European Court of Justice, and even the High Court of South Africa, stating unequivocally that the Kingdom of Morocco as the occupying power has no sovereignty over Western Sahara. Furthermore, that its natural resources can only be extracted and traded legally with the free, prior and informed consent of the Polisario Front.

It is therefore extremely worrying to note the recent decisions by the European Commission and the European Parliament which have ignored this whole body of legal jurisprudence and judgements. A case could be made that this directly contradicts Article 1 of the UN Charter, which calls for respect and peace among states and peoples. These decisions are driven by narrow national political and economic interests, and are taken with complete impunity and a shameful disregard for the rule of law.

It is against this background, that we look forward to the valuable contributions from the panellists, who hopefully will seek to shed light on how powerful political and economic interests strengthen and perpetuate the violations and abuses of the human rights of the Sahrawi people.

During the height of the liberation struggle, Nelson Mandela developed a practice of politics in which moral force was the core element. This was about deploying human dignity against brutality and forcing oppression to yield ground. This kind of politics has a long history in anti-colonial and anti-racist policies.

It is time for us to start a conversation about the manner in which the political and economic interests of the powerful are perpetuating the oppression of the Sahrawi people. My fellow panellists are part of that conversation. We look forward to what they are going to say.

I thank you.

**40<sup>th</sup> Session of the Human Rights Council**  
**High-Level Side Event**

**The European Union and its member States' Responsibility over the  
decolonization process of Western Sahara**

**Dr. Klaus Buchner – Member of the European Parliament  
(Germany)**

I want to begin my presentation by showing my deep respect to all Saharawi people who stay in the refugee camps. Most of them could have a much easier life in other countries, but they stay in order to confirm the claim for their home country.

Much respect is also due to the democratic and effective organization of the camps. There are all necessary levels from a complete government down to the organization of only handful families. For me it was surprising that so many women are engaged in this work.

I am also thankful to the Algerian Government that has given enough land to build the refugee camps and to supply them with some infrastructure, where possible even with electricity.

But even if all these aspects must be very much appreciated, the life in the Camps is only acceptable if there is some hope that it will be transformed soon into normal life conditions, as is the hope for all refugee camps. So we all wish that the work of the special representative of the UN, Horst Köhler, will be successful. Certainly, you will learn more about this by other speakers of this Conference.

But the European Union has undermined his efforts to find a peaceful solution which can be accepted by both sides: The EU has concluded a Free trade Agreement with Morocco which includes the occupied territories of Western Sahara. This agreement was challenged in front of the European Court of Justice, who ruled that the part of the treaty on the occupied territories is not valid unless Polisario, the government of Western Sahara, gives its consent. But the European Commission, who always claims to follow the rule of law and to respect Human Rights said openly that they try to circumvent this judgment. And they did: They consulted some groups in the occupied territories, almost exclusively organizations of Moroccans living there, but not Polisario. The European Commission offered even a consultation with Polisario. But the ECJ ruled that the consent is necessary, not a consultation. Consequently, Polisario denied such a consultation. It is a shame that most political groups in the European Parliament ratified this Agreement. This happened in December last year.

There was an interesting detail: The rapporteur in the EU-Parliament for this ratification was a lady, who had a personal financial interest in the agreement. When this became known, she had to resign, and her position was assigned to another lady from another political group. But the report itself remained completely unchanged. Protesting against this, a few of us left the room before the vote.

A fishery agreement was concluded in the same way. Only a few weeks ago, in January this year, the European Parliament has ratified also this contract.

The consequence of all this is, that the Status Quo is cemented and acknowledged, which has been lasting already for 40 years. This prevents a peaceful solution which can only be a referendum by the Sahrawians about their future either in Morocco or in an independent state, as has been required by the UN for decades. The European Commission thus creates facts which make the negotiations by Horst Köhler difficult, if not impossible. The clear message of the European Commission is that they want to give the occupied territories to Morocco – an illegal act against International Law and the Law of Nations.

It is a shame to state that the European Commission, backed by the Council and the majority of the European Parliament, does this, although e.g. President Juncker always states that Europe follows the Rule of Law and respects Human Rights. For me this shows only the shocking hypocrisy of the EU institutions.

Of course, you will ask, why the Parliament does this. The reason is that the strongest political parties also are the ruling parties in the member states. In their governments they are afraid of the migrants from Africa. And Morocco promises them that they will stop them before they reach Europe. We all know that his is only half of the truth. But the Moroccans are rather clever negotiators. As compared to the problem of the migrants, the commercial interests of Europe in the occupied territories are less important, but still strong.

One point which I still need to discuss is the Humanitarian Situation. In the occupied territories, Morocco tries to eradicate everything which reminds of Saharawi ethnics, culture or tradition. If somebody on the street wears a Saharawi dress, then members of the Secret Police follow him. Saharawi people are often arrested without any reason and kept in a police station for one or two days. In this time, sometimes nothing happens, but sometimes the person is tortured in incredible ways. I have met a young man who was kept lying on a bench, was doused with petrol which then was lighted. After a short time, the fire was extinguished again. This man has even serious injuries of some inner organs which make a medical check necessary every three days.

The situation is worse for more than 50 people, who serve sentences of many years in Moroccan prisons for peaceful protests. Most of them were tortured in a terrible way before the trials. One should also know that the longest wall in the world is neither the Chinese Wall, nor a wall between the US and Mexico. It is the wall built by Morocco between the occupied and the liberated part of Western Sahara. But even for Morocco, this wall does not make sense, because during the war, when they tried to conquer the territory of Western Sahara, they put millions of land mines in the liberated territory. The wind blows them together with the sand in the desert through the whole territory. It is impossible to enter it, because frequently people die of their explosion.

In this connection, it is worthwhile to mention that also some private firms in Europe profit from these Human Rights violations. As examples, I select two companies from my own country. One of them is Siemens which, together with other firms, develops wind energy in the occupied territories. The other is Ciments du Maroc, a subsidiary of Heidelberg Cement. But these are only two out of many European enterprises taking advantage of the situation.

### **What can we do in the present situation?**

1. First of all, the ECJ needs to decide again that the revised Trade Agreements with Morocco are illegal.
2. A public campaign should be made to make the behavior of Siemens, Heidelberg Cement and others public. This is more efficient than a court ruling, because private companies fear bad reputation.

3. In this connection, the UN-mission of Horst Köhler must be supported by press releases.
4. Finally, there is no alternative to a referendum of the Sahrawians to decide their future. But, of course, Morocco opposes this idea at least as long only Sahrawians can decide. We have very bad examples in history with referenda and public consultations, which should warn us: The first are the revised EU-Morocco Free Trade Agreements, which purposely misinterpreted the ECJ-ruling by replacing “people of Western Sahara” by “population in Western Sahara” and replacing “consent” by “consultation”. The second example is the referendum in Upper Silesia about 100 years ago. There the population which could take part in the referendum was partly exchanged by the Polish administration supported by the French government.

But whatever will happen, the life in the refugee camps will still go on for years. Therefore we need a plan how to improve the life there. The most urgent questions, however, cannot be solved by us: Supply of water and electricity for all camps, building materials etc. Still, with the help of all of us, at least the financial situation of many families could be improved: In the camps we meet many very well educated and trained people who would like to earn enough money for a decent life. It is true, due to the solidarity of the international community and to the really good organization of the camps, the basic nutrition is provided for everybody. But people need also vegetables and fruits, which are expensive in the middle of the desert, and from time to time also some little luxury. Economically speaking, money comes into a society by selling goods. I agree, this is difficult in the middle of the desert – difficult, but not impossible. I am sure; discussions like the following one are not at all new. Still, I think they are necessary:

All items produced in Western Sahara should be easily transportable. This immediately reminds us that production of all sorts of software products should be considered. Of course, in order to develop them, electricity and fast data connections are key. There are already some places where electricity and reasonable data lines are available. Others will follow.

Somewhat more difficult is handicraft, in particular assembly of small technical items – more difficult, because the requirements are higher, e.g. keeping sand and dust out of the production rooms. This in turn means that more water and energy are necessary. Exotic examples are the assembly of mechanical watches, electromechanical components and of model railway locomotives, or more generally many kinds of high value toys.

Summing up, the European Commission, many European governments and many political parties in the European Parliament prefer the advantages the Moroccan government offers to them and violate International Law and Human Rights – a shame for Europe.

I thank you for your attention.

**40<sup>th</sup> Session of the Human Rights Council  
High-Level Side Event**

**The European Union and its member States' Responsibility over the  
decolonization process of Western Sahara**

**Prof. Pål Wrange  
Professor of International Law, University of Stockholm**

I thank the organizers for inviting me to this meeting.

I am a professor of international law at the University of Stockholm and I am also a former legal advisor for the Swedish ministry of foreign affairs

There is an evident discrepancy between the geographical vision of Western Sahara of the Moroccan authorities and the one of International Law.

**Western Sahara recent history:**

In 1963, the UN listed Western Sahara on its list of Non-Self-Governing Territories (NSGT). The NSGT are administered by the colonizers: in this case, Spain was listed as the administering state of Western Sahara.

In 1974, approximately one year before Franco died, Spain agreed to organize a referendum on self-determination and at about the same time the United Nations General Assembly requested an advisory opinion from the International Court of Justice. That opinion was delivered in October 1975 and it essentially said that while there had been links between the sultanate of Morocco and some tribes of Western Sahara, those links did not prevent the application of the principle of self-determination for the people of Western Sahara.

This opinion was delivered on the 16 of October. Almost immediately thereafter Morocco took military measures across the borders, followed by the famous green march of 200 or 300 thousand civilians who entered into Western Sahara.

Shortly after that, there was an agreement between Spain, Morocco and Mauritania, in which Spain renounced administration and handed it over to Morocco and Mauritania, which then split the territory between them.

After fighting between Polisario and the two occupying powers, Mauritania left the territory in 1979, and Morocco took over the whole territory. The war continued between Morocco and Polisario.

In 1991, the two parties agreed on a ceasefire and for the organization of a referendum. The agreement was endorsed by the Security Council which also created MINURSO, the UN Mission for the Referendum in Western Sahara.

Mostly due to Moroccan intransigence, the referendum was never held. And in 2007 the King of Morocco announced the Moroccan autonomy plan which finally closed the door to a referendum in the official position of the Kingdom of Morocco.



Under international law, a territory can have a number of different statuses. It can be under the control of a non-colonial sovereign, which is the position of most territories of the world, including for instance Switzerland. For such states, sovereignty prevails, although with a number of legal restrictions on the freedom of action, such as obligations under international human rights law.

Then there are colonies which are territories under the formal sovereignty over a state but in which there are important exceptions to the sovereignty of that state. Such territories are called non-self-governing territories. In addition to human rights law and other usual obligations of international law, the law of self-determination applies since these territories are not self-governing territories, including the principle of permanent sovereignty over natural resources, which applies to non self-governing territories.

A territory can also be occupied, which is the case when one state controls militarily a territory. In such cases, the law of occupation applies, including international humanitarian law.

A fourth state of affairs is an illegal annexation: that is when a state, in contravention to international law has annexed a territory. That is the case of for instance of the occupied Palestinian territories, the Golan heights and Crimea. In those cases, when an annexation of a territory has taken place in violation of international law, the legal affects of the annexation are void and the territory is still, for legal purposes, considered to be under occupation.

As we will see, three of those states of affairs apply simultaneously to Western Sahara: It is illegally annexed, it is occupied at it is still a non-self-governing territory, waiting for the right of self-determination to be realized.

### **The legal situation of Western Sahara:**

The people of Western Sahara continue to have their right to self-determination. That right has not been exercised. Sahara is truly Africa's last colony.

As a consequence of the right of self-determination, states have the duty to refrain to enforce of an action which deprives people to the right to self-determination, freedom and independence.

As already implied, the annexation is illegal and void since the occupation of Western Sahara took place in violation of the international law; it was against the will of Spain who was forced by military means to hand over the administration of the NSGT to Morocco, and it was certainly against the will of the people of Western Sahara. So, Morocco has no legal title or legal claim over the territory of Western Sahara, and the territory is therefore still occupied, and non-self-governing.

What does that mean for third states or third parties in general, like the EU and the states represented at this meeting?

First of all, a state may not knowingly assist Morocco to maintain this illegal state of affairs. This follows from Article 16 of the Articles on State Responsibility, commended by the General Assembly in 2001 and generally held to express customary international law. Further, for serious violations of "peremptory norms", such as illegal annexation, Article 41 of these articles provides that there is a duty to not recognise the result – that is, the illegal annexation and the denial of self-determination – nor to support it.

So, regardless of whether the initial of the attack by Morocco against Western Sahara was illegal in 1975 -- which it was -- it is illegal to hold or acquire a territory in denial of the right to SD. The obligation to not recognize applies not only to express but also to implicit recognition.

As for natural resources, the law of occupation allows a state to use natural resources but only for the legitimate purpose such as to uphold order or provide for the welfare of the people. Further, in a Non Self-Governing Territory, the people have the right to their natural resources.

In a very important, and oft-quoted, legal opinion from 2001, the then legal counsel of the UN – Hans Corell – stated that resource exploitation in Western Sahara has to be in accordance with “the interests and wishes of the people of Western Sahara”

A similar conclusion was made by the legal counsel of the AU in 2015, when he said that people of Western Sahara must be consulted and must consent reaching an agreement which involves an exploration of the resources of the territory of Western Sahara.

I need to make an important footnote here, and that is that there is an important distinction between people and the population.

A population is a group of individuals who happen to live in a geographical space. A people, by contrast, are a self-determination unit; it is a group of people that have a political status and have a right to exercise the right to self-determination. A population can consist of both indigenous persons, which have always lived there and who belong there (members of the people), and of settlers who have been moved there by the occupying power. The important concept here is the people -- one always has to make a distinction between the indigenous and settlers.

### **What about the EU?**

The European Union has longstanding and close relations with Morocco, from 2000 under the framework of the Association Agreement. Following on that agreement, there have been a number of other agreements on fisheries, on trade liberalization, etc.

These agreements have given rise to litigation before the Court of Justice of the European Union, which is the highest judicial organ of the European Union. POLISARIO challenged the liberalization agreement in agricultural and fisheries products and the UK Western Sahara Campaign, a NGO, challenged the fisheries partnership agreement.

In both cases, the main question for the Court was whether the agreements between the European Union and Morocco cover Western Sahara. So, it came down on an interpretation of the term of the territory of the Kingdom of Morocco. And here the Court, referring to the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, said that Western Sahara is still a Non Self-Governing Territory and as such it has a distinct and separate status. The European Union Court of Justice also referred to the 1975 Court of Justice’s advisory opinion.

Since Western Sahara is a Non Self-Governing Territory with a separate status, this means that the people of Western Sahara are a third party. Hence it cannot be bound by the agreement as such. It could have been bound if it had consented to be bound, but that has not happened. So the agreement does apply to Western Sahara. Technically speaking, POLISARIO lost its case because it has no standing. But the substantive outcome was exactly what the POLISARIO wanted to be asserted: neither of the agreements between the European Union and Morocco are binding.

Subsequently, the Council of Ministers instructed the European Commission to prepare two new agreements that will expressly cover the Territory of Western Sahara. Both of them were finally accepted by the European Parliament early this year. But, I’m sure that these agreements will be challenged as well before the Court of Justice of the European Union. So we will see what will happen because I think it is very unlikely that they will conform to the requirements that the Court of Justice has made.

As a conclusion, the obligations of Morocco are:

- to allow the referendum to go ahead, in accordance with the principle of the right to self-determination;
- to respect human rights (as they always have to);
- to not use the natural resources of Western Sahara without the free, prior and informed consent of the recognized representatives of the Territory.

Third states and third parties in general, including the EU, cannot contract with Morocco over Western Sahara without the consent of its people; mere consultations are not sufficient. They cannot recognize Moroccan's sovereignty over Western Sahara and they cannot support Morocco's continued occupation, including its creation of facts on the ground through building infrastructures, etc.

All parties, including private parties, also have to be aware, that they may be complicit in the occupation and that, in certain circumstances; it may be a war crime to participate in the plunder of Western Sahara's resources.

Some people and States claim that the Territory is disputed and that its legal status is unclear. My simple suggestion is then to ask the International Court of Justice for an advisory opinion on the matter. The Court recently issued an advisory opinion on the application of the principle of self-determination to the Chagos Archipelago.

The General Assembly could request a similar opinion on Western Sahara through a decision by a 2/3 majority of the present and voting (abstentions do not count). Such a question could, for instance, be formulated like this:

“What are the legal consequences of the continued [occupation] [control] by Morocco over the major part of Western Sahara, in particular for third parties?”

I thank you for your attention.

**40<sup>th</sup> Session of the Human Rights Council  
High-Level Side Event**

**The European Union and its member States' Responsibility over  
the decolonization process of Western Sahara**

**M. Erik Hagen – Western Sahara Resource Watch  
Co-auteur of "Profit over Peace in Western Sahara"**

Thank you for inviting me to attend this important meeting. I am a member of the non-governmental organization *Western Sahara Resource Watch*. We have been campaigning and researching the matter of natural resources in Western Sahara for fifteen years.

We see natural resources as not only providing Morocco with a financial incentive to maintain its occupation, but as giving it a sign of political legitimacy to justify its illegal presence.

I will elaborate on how the EU set aside principles of international law for the benefit of short-sighted self-interest. The processes occurring in EU institutions in 2018-2019 are similar to what we saw at the time of an important 2011 vote in the European Parliament on EU fisheries in Western Sahara. The latter is covered in my recent book 'Profit over Peace'.

During the last year, EU institutions have essentially put the decisions of the European Court of Justice in a drawer. The same Union that speaks of international law and principles of law in countries within and outside of the EU has ignored the Court of Justice's decisions in the case of Western Sahara.

The extent of this double standard is reflected in the 2010-2011 debate regarding fishing practices. Fishing in Western Sahara waters has for centuries been a Spanish tradition, and when Spain allowed the Moroccan Occupation to take place, part of the transition deal ensured that Spain would be permitted to continue fishing. When Spain became a member of the EU in 1986, these practices became part of EU common fisheries policy.

In order to defend EU-Moroccan fisheries in occupied waters, the EU has typically used four basic arguments. Firstly, the EU claims that the fishing agreement in Western Sahara's waters represents a purely financial transaction, and that it has nothing to do with politics. The second argument is that fishing contributes to employment and development. Thirdly, they state that operations are legal. And finally, that fishing is environmentally friendly and sustainable.

In 2011, for only the second time in European history, the EU Parliament rejected a trade agreement approved by Council. The vote was regarding a prolongation of the EU's fisheries practices in Western Sahara, and the decision was highly important politically for the Sahrawis. The vote followed a development whereby all arguments the EU had used, were proved wrong.

The argument used by the EU, that the agreement was not political in nature, was undermined by the Moroccan government itself, which argued that any agreement failing to exclude Western Sahara represented proof of Moroccan sovereignty over the disputed territory. As to the financial aspects of the agreement, independent assessments commissioned by the European Commission found that this was the least financially beneficial fishery agreement ever. For every Euro invested, the EU gained 65 cents in return. Further, the argument concerning economic development was deemed invalid as, according to the Commission's own evaluations, Morocco was not able to provide any proof that the deal provided any Saharawis with jobs. When it comes to the legal aspect of the case, a the former UN Legal Counsel stated that the agreement was obviously illegal and that this left him "embarrassed" to be European. This was the same UN official whose legal texts had been used by the EU to argue for the "legality" the agreement. Finally, the Commission's own assessments found that all fish stocks that were subject to the agreement were being overexploited as part of EU practices.

Despite all of the arguments against the agreement - which was found to be illegal, financially destructive to the EU, not contributing to local development and detrimental to fish stocks - 326 parliamentarians voted in favour of the agreement and 296 against it.

It is hard to understand how any parliamentarian could support such a deal. We tried to get those in favour of the practices to explain their position, but none were willing. The massive support to something that is intuitively destructive illustrates the situation up until today.

After 2011, when the fisheries agreement ended, the EU signed three new agreements applicable to Western Sahara: one trade agreement, one fisheries agreement and one aviation agreement.

From 2015 to 2018, different court cases challenging these agreements have proceeded to the EU Court of Justice. The first ruling came in 2015, when the Court stated that an EU-Morocco agreement could not include goods from Western Sahara. Following the judgement, Morocco attempted to apply political pressure by pouring in record numbers of immigrants into Spain. In 2016 up to 700-800 immigrants arrived each day via the Spanish borders.

Since January 2018, the EU Commission has attempted to build a new framework to argue for the continuation of the trade agreements that include the occupied territory of Western Sahara. But how would the EU do this?

The little opening that they have used involves the Court's notion that that any trade agreement with Western Sahara requires the consent of the people of the territory.

The EU has argued that consent is not possible to obtain, as it claimed it had no one to obtain the consent from. Instead, the EU decided to engage in a "consultation process" regarding the benefits under the agreement. The fact that the Court had specifically stated that benefits are irrelevant in relation to the legality of the agreement was not taken into consideration.

Instead of carrying out a process to obtain the *consent* regarding the mere *existence* of an agreement for Western Sahara, the EU undertook a *consultation processes* regarding the *benefit* from an agreement that the EU had already initialed with the Moroccan government in January 2018.

So who would the EU "consult" regarding these "benefits", of which the Court had already stated were irrelevant? This was the dilemma of the EU during the first months of 2018.

After the ruling, Polisario had requested and obtained a meeting with the EU Commission to discuss what follow-up there would be of the judgment. The Commission then, without ever conferring with Polisario, reported to member states that this meeting was a 'consultation' meeting. Why Polisario, who had been fighting EU institutions in the Court for several years, and winning, would take part in a consultation process on the benefits for Moroccan settlers of an EU-Moroccan trade agreement illegally signed for Western Sahara, was not explained further.

After that, the EU started reaching out to civil society in Western Sahara claiming that they were in contact with Polisario regarding a new agreement, asking to join in a dialogue regarding the benefits of such agreement. They contacted and misled self-determination groups in Western Sahara, who stated that they could never take part in a consultation process unless it first obtained consent from Polisario.

Then, the Commission contacted groups as our association, Western Sahara Resource Watch. We understood the intentions of the Commission, to misuse our name to give credibility to an illegal process, so we told the Commission in February 2018 that we were not interested in taking part in a consultation process that has not first obtained the consent of the people of Western Sahara.

In May-June of 2018, the Commission proudly presented to EU Member States and Parliament what was called a Staff Working Document – which contained the alleged proof that they had engaged in a dialogue process with a wide spectrum of groups of all possible political opinions regarding Western Sahara and the benefits from EU-Moroccan agreement in Western Sahara.

The Commission's Staff Working Document includes in total 114 associations and individuals. It looks impressive enough at first sight, but it is not.

First, the list contains Polisario, which was clearly not consulted. Second, it includes Moroccans elected in Moroccan parliamentary elections in Western Sahara. Our association asked the Commission whether the EU recognizes parliamentary elections in Western Sahara, but it failed to respond. Further, the annex includes 10 different economic actors in Western Sahara, all of which are either Moroccan state companies, Moroccan state research institutes, Moroccan associations, or Moroccan National Fisheries Institutes. None of them are Saharawis.

In total, the Moroccan entities above constitute 18 of the 114 in the annex.

Finally, the list includes reference to 96 pro-Saharawi or Saharawi pro-self-determination groups. None of them have taken part in the consultation; all of them have condemned the process.

One of these groups is our own. We specifically, and in writing, rejected taking part in such consultation, yet our good name is on the list of consulted groups.

Based on this process, the EU Commission stated that there is 'broad support' for a new trade agreement. Anyone who reads the Commission's files, and who contacts any of the organisations mentioned in the EU documents, would easily find out that the EU is distorting the truth. Our association has been gravely misrepresented, along with 93 other Saharawi and pro-Saharawi groups.

The EU parliament was set to vote on the matter. The Parliament sent a delegation to Western Sahara, led by the rapporteur on the trade committee, Patricia Lalonde. Before even the first day of the mission had passed, Mrs Lalonde proudly announced to the Moroccan media that there was broad support for new trade agreement. At that point, she had not met with any Saharawi groups. The delegation spent nearly all its time with the same 18 Moroccan associations as had been consulted by the EU, and almost no time with the 94 who had been dishonestly name dropped. The delegation spent more time with the French Chamber of Commerce than with the Saharawi groups altogether.

After the delegation's return to Europe, when it was revealed that the rapporteur sat on the board of a pro-Morocco lobby group, she stepped down from her position as rapporteur, but her report remained unchanged. The new rapporteur voted against the report, but it received a clear majority in the Parliament.

The EU seems to go to any length to vote against the law. For instance, in the preparations for the new trade agreement, a majority of the parliamentarians on the agricultural committee voted for the inclusion of a new trade deal with Western Sahara. The report they voted on, which recommended a new agreement, solely contained arguments *against* the deal – such as lack of data and lack of knowledge on how it could negatively affect European farmers.

The result is that the European agricultural association is today seriously concerned that they are entering a new trade agreement with Morocco that includes Western Sahara. Spanish, Italian and French tomato producers are now competing with tomato production on an occupied land.

In the case of Western Sahara, the EU has always acted as if international law does not exist. Now it acts as though the judgments of the CJEU do not exist either. Even after the rulings, trade has continued as if nothing has happened, under the same tariff regime. Goods produced by Morocco, in Western Sahara, keep flooding into the EU as if nothing has happened. In particular, we see fish oil transported from Western Sahara into France, fishmeal into Germany and frozen fish products into Spain.

It is time the EU respects international law, EU courts and democratic principles. To begin with, it should respect its own highest court. From the perspective of the Saharawi people, the EU is the contrary of an organization respecting the rule of law.

I thank you for your attention.



## **40<sup>ème</sup> session du Conseil des droits de l'Homme**

### **Evénement parallèle de Haut-Niveau**

## **La responsabilité de l'Union Européenne et de ses Etats membres dans le processus de décolonisation au Sahara occidental**

**M. Jean-Pierre Tuquoi – Journaliste**

**Ancien responsable pour l'Afrique du Nord à “Le Monde”**

### **La France, alliée du Maroc**

1/ Le constat : la France est et demeure le principal allié du Maroc. C'est vrai sur tous les dossiers qu'il s'agisse des négociations commerciales au sein de l'Union européenne ou du dossier du Sahara occidental. [D'où parfois l'agacement de certains pays, en particulier d'Europe du nord.]

2/ Ce soutien est constant. Que le chef d'Etat français soit un homme venu de la gauche ou de la droite, ne modifie en rien l'attitude française. François Mitterrand, un socialiste arrivé à l'Elysée avec les voix communistes, n'a pas été moins proche du Maroc de Hassan II que Jacques Chirac qui avait l'habitude de passer ses vacances au Maroc.

Nicolas Sarkozy élu, on a crû un temps qu'une inflexion allait se produire parce que le nouveau chef de l'Etat avait choisi de consacrer à l'Algérie et non pas au Maroc sa première visite au Maghreb, contrairement aux usages. Rabat avait montré son mécontentement et très vite Paris avait fait amende honorable. De même lorsque le socialiste François Hollande a été élu président de la République, certains ont imaginé que la France allait prendre ses distances par rapport au Maroc au prétexte que le nouveau président français n'avait aucun lien avec le Maroc (il n'y allait pas en vacances), alors qu'il connaissait l'Algérie. Très vite, il a fallu se rendre à l'évidence : la France restait au côté du Maroc comme elle l'avait été sous le précédent quinquennat.

3/ Pourquoi ce soutien depuis près d'un demi-siècle (rappelons que la dernière crise diplomatique véritablement sérieuse entre la France et le Maroc remonte aux années de Gaulle et à l'affaire Ben Barka) ?

- Ce n'est pas « un effet pastilla ». Je veux dire par là que ce ne sont pas les petits cadeaux, les invitations « sucrées » dont bénéficient à l'occasion certains dirigeants et responsables français de la part de Rabat qui dictent la politique française. Disons qu'ils créent une connivence indéniable, une atmosphère de complicité, une proximité entre les classes dirigeantes des deux pays, et qu'ils fournissent parfois le sujets de livres à des journalistes. Mais le Maroc n'est pas le seul à pratiquer cette diplomatie de la pastilla. La Tunisie de Ben Ali savait faire de même – alors que les Algériens ont beaucoup à apprendre...).

- Je ne crois pas d'avantage aux explications économiques. Certes tous les grands noms de l'industrie française, ceux du Cac 40, et près d'un millier de Petites et moyennes entreprises sont implantés au Maroc qui reste, bon an mal an, le premier partenaire commercial de la France (même si certaines années l'Espagne lui conteste le titre).

Mais il ne faut pas exagérer l'importance de l'économie. Le Maroc reste un nain économique (son PIB, de l'ordre d'une centaine de milliards de dollars - inférieur à celui de l'Algérie - représente moins de 4% du PIB français). Disons que l'économie marocaine est équivalente à celle de deux ou trois département français, pas davantage. Ca n'est donc pas un partenaire stratégique et incontournable pour la France.

- Je crois que le soutien français s'explique par des raisons politiques. Rabat, avec Hassan II, a fait de la « marocanité » du Sahara occidental une cause nationale et Paris est convaincu que, si un referendum d'autodétermination est organisé, il conduise à l'indépendance du Sahara occidental et à crise du régime marocain.

Or pour la France une déstabilisation du royaume créerait de graves problèmes. Est-ce qu'un régime islamique ne prendrait pas sa place à deux heures d'avion de Paris? Les islamistes, même divisés, sont la principale force politique d'opposition aujourd'hui. Comment réagirait dans ce cas la communauté marocaine installée en France ? N'y aurait-il pas des attentats sur le territoire français ? Quelles seraient les conséquences en termes d'afflux de réfugiés ? Ce sont des questions graves et je suis convaincu que c'est pour éviter ce « scénario catastrophe » que le soutien de la France à la position marocaine est un élément constant de la politique de mon pays. C'est d'ailleurs pour des raisons identiques que Paris a soutenu l'Algérie à la fin des années 1980 lorsque l'armée a « volé » la victoire électorale du Front islamique du salut (FIS). C'est pour des raisons identiques que Paris a volé au secours du régime malien lorsqu'une colonne d'islamistes est descendue sur Bamako.

Les Etats-Unis ne sont pas dans la même position. Il faut se souvenir que ce sont les républicains avec James Baker, ancien secrétaire d'Etat et représentant personnel du secrétaire général de l'ONU (plan en 2001, 2002 et 2003) qui ont pesé pour que l'identification des Sahraouis débute et que l'on se dirige vers le référendum d'autodétermination. A l'époque, James Bolton, était un responsable au département d'Etat (il a participé au début des années 1990 à l'établissement du mandat de la MINURSO avant d'être nommé ambassadeur des Etats-Unis à l'ONU de 2003 à 2005). Il appuyait cette politique dont le Maroc ne voulait à aucun prix.

Je ne pense pas que John Bolton a changé d'opinion. Pour lui, il s'agit d'un conflit du passé, qui coûte cher aux Etats-Unis à cause du financement des casques bleus. Il a parlé il y a quelques mois de sa « frustration » devant l'immobilisme des acteurs. S'il peut peser pour que le dossier avance il le fera. C'est lui qui est le mieux à même de faire bouger les lignes. Pas la France.

\*\*\*\*\*



## **République Arabe Sahraoui Démocratique**

**S.E. Ambassadeur Taleb Omar Abdelkader**

**Événement parallèle de Haut-Niveau**

**Palais des Nations – Genève, 27 février 2019**

### **La responsabilité de l'Union Européenne et de ses Etats membres dans le processus de décolonisation du Sahara occidental**

Excellences, distingués invités, Mesdames et Messieurs,

Permettez-moi tout d'abord d'exprimer ma gratitude aux membres du Groupe de Soutien de Genève, y compris l'Association Américaine de Juristes, pour avoir organisé cet important événement parallèle. Je tiens en particulier à remercier le Gouvernement sud-africain et le Vice-Ministre Landers pour sa participation très opportune; je tiens à le remercier pour ses paroles de solidarité qui nous rappellent également à tous que le droit international doit prévaloir sur les jeux géopolitiques et tout autre intérêt. Je remercie également, Madame l'Ambassadeur Mxakato-Diseko, pour avoir assumé la direction du Groupe de Soutien de Genève pour cette année 2019.

Permettez-moi également de remercier chaleureusement tous les intervenants pour leurs exposés très intéressants et très précis.

Je ne vais pas rappeler en détail le dernier siècle de l'histoire du peuple sahraoui pour vous expliquer ses souffrances de la période coloniale et, par la suite, celles de l'occupation militaire illégale d'une grande partie du Sahara occidental de la part du Royaume du Maroc. Je tiens simplement à souligner que lorsque je parle de la souffrance du peuple sahraoui, je fais référence aux conséquences de plus de 40 ans de contrôle militaire dans le territoire occupé sur les familles sahraouies, séparées, vivant dans les camps de réfugiés ou en exil.

En effet, le refus constant du Royaume du Maroc de permettre au peuple sahraoui d'exercer librement son droit inaliénable à l'autodétermination et à l'indépendance est à l'origine de violations systématiques et graves d'un large éventail de droits humains, sans parler des violations du droit international humanitaire, en particulier de la quatrième Convention de Genève.

Il convient de rappeler ici qu'en octobre 2015, dans son Observation finale sur le quatrième rapport périodique du Royaume du Maroc au Comité des droits économiques, sociaux et culturels, le Comité "réitère sa préoccupation devant l'absence de solution à la question du droit à l'autodétermination du territoire non autonome du Sahara occidental. De même, le Comité demeure préoccupé par la situation précaire, à leur retour, des réfugiés sahraouis déplacés par le conflit au Sahara occidental". Et le Comité a souligné que " il est également préoccupé par le fait que le droit des Sahraouis à participer à l'utilisation et à l'exploitation des ressources naturelles n'est toujours pas respecté ".

De même, en novembre 2016, dans ses Observations finales sur le sixième rapport périodique du Royaume du Maroc, le Comité des droits de l'homme a souligné qu'il "demeure préoccupé par..." : a) Les progrès limités réalisés dans le traitement de la question de l'autodétermination du peuple du Sahara occidental ; b) Il est signalé que l'État partie ne prend pas toutes les mesures nécessaires pour consulter le peuple du Sahara occidental sur la mise en valeur des ressources naturelles du Sahara occidental ; et c) la présence du mur

de sable, également connu sous le nom de "Berm", qui limite la liberté de circulation du peuple du Sahara occidental étant donné le très petit nombre de points de passage ouverts aux civils et la présence de mines terrestres et autres restes explosifs de guerre le long du mur qui mettent en danger la vie et la sécurité des communautés situées à proximité".

A cet égard, de nombreuses organisations de défense des droits de l'homme confirment le caractère systématique des violations des droits de l'homme commises par la Puissance occupante. Le territoire occupé continue de vivre sous la répression, le siège, les jugements illégaux rendus à huis clos, et ceux qui osent s'y intéresser sont toujours expulsés. Le Royaume du Maroc et ses alliés s'opposent à l'octroi à la MINURSO des prérogatives de contrôle des droits de l'homme au Sahara occidental.

Les exposés présentés par les éminents intervenants ont clairement montré que la politique du Royaume du Maroc à l'égard du Sahara occidental ne peut être durable sans le soutien politique de grandes puissances jouant leur rôle dans les organes politiques de l'Union européenne et dans le système des Nations Unies.

Pendant combien de temps des démocraties fortes comme la France et l'Espagne peuvent-elles soutenir une occupation militaire illégale ? Comment ces gouvernements peuvent-ils expliquer à leurs propres populations qu'ils violent délibérément et de manière flagrante les principes et normes fondamentales qu'ils ont élaborés pour l'Union européenne et les Nations unies ?

D'une part, ils prêchent la justice, la démocratie et l'État de droit et, d'autre part, ils pratiquent le contraire. Un exemple de cela, entre autres, est la signature très récente d'accords commerciaux entre l'Union européenne et le Royaume du Maroc qui incluent le Territoire du Sahara occidental et ce en totale contradiction avec les arrêts de la Cour Européenne de Justice, réaffirmant que le Sahara occidental a un statut séparé et distinct et que le Royaume du Maroc n'a aucune souveraineté sur le Sahara occidental.

La République arabe sahraouie démocratique exhorte l'Union européenne et ses Etats membres à se conformer strictement à ses principes et normes afin de soutenir, de bonne foi, les efforts déployés par l'Envoyé spécial du Secrétaire général des Nations Unies, le Président Horst Köhler, en vue de parvenir à une solution politique juste, durable et mutuellement acceptable, qui permettra l'autodétermination du peuple du Sahara occidental dans le contexte des arrangements conformes aux principes et objectifs énoncés dans la Charte des Nations Unies et les résolutions de l'Union africaine. La République Démocratique Arabe Sahraouie exhorte également l'Union Européenne et ses Etats membres à ne pas s'impliquer dans l'exploitation illégale des ressources naturelles du peuple Sahraoui.

En effet, il faut considérer qu'il existe une nouvelle dynamique qui rompt avec l'état de blocus et d'impasse qui a duré des décennies. Le mois prochain, une série de réunions et de négociations seront organisées à Berlin et à Genève. Nous espérons qu'ils examineront les questions de fond et iront de l'avant en prenant des mesures concrètes pour porter à terme la décolonisation du Territoire, en donnant la parole aux peuples des territoires non autonomes qui doivent être entendus, comme l'a dit le Secrétaire général Antonio Guterres à l'ouverture de la session de 2019 du Comité spécial de la décolonisation, où il a rappelé le devoir qui leur incombe de soutenir tous les peuples des territoires non autonomes pour mettre un terme au processus de décolonisation.

Pour terminer, je voudrais me faire l'écho de la résolution adoptée chaque année par consensus par l'Assemblée générale des Nations Unies sur l'application de la Déclaration sur l'octroi de l'indépendance aux pays et aux peuples coloniaux, qui exhorte tous les États, directement et par leur action dans les institutions spécialisées et autres organismes des Nations Unies, à fournir une assistance morale et matérielle aux peuples des territoires non autonomes, selon leurs besoins.

Je salue tous les pays et organisations qui se conforment à cette résolution, qui ont soutenu la lutte du peuple sahraoui : il y en a beaucoup ici aujourd'hui qui se sont distingués tout au long des 43 années de lutte, par l'hospitalité sur leur territoire ou différentes formes de

soutien, jusqu'à la conférence des pays de la SADC qui accueillera l'Afrique du Sud fin mars prochain. L'Afrique du Sud, toujours guidée par l'esprit du leader mondial Nelson Mandela.

Enfin, je remercie chaleureusement le Groupe de Soutien de Genève pour le Sahara occidental. Compte tenu de l'importance de son rôle, nous lui souhaitons de continuer à développer et diversifier ses méthodes et formes de soutien à la cause sahraouie dans cette ville à la dimension internationale exceptionnelle.

Je vous remercie de votre attention.

\*\*\*\*\*



## **Sahrawi Arab Democratic Republic**

**H.E. Ambassador Taleb Omar Abdelkader**

### **High-Level Side-event**

**Palais des Nations – Geneva, 27 February 2019**

## **The European Union and its members States responsibility over the decolonisation process of Western Sahara**

Excellencies, 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 important side-event. I wish in particular to thank the Government of South Africa and Deputy Minister Landers for his participation to this very timely side-event; I wish to thank him for his words of solidarity which also remind to all of us that international law must prevail on geopolitical games and any other interests. I thank you H.E. Ambassador Mxakato-Diseko for leading the Geneva Support Group this year.

Let me also warmly thank all panellists for their very interesting and accurate presentations.



I'm not going to recall in details last century history of the Sahrawi People to explain you its suffering from the colonial period and, subsequently, the suffering from the illegal military occupation of the Kingdom of Morocco of a large part of Western Sahara. I just wish to stress that when speaking about the suffering of the Sahrawi People, I refer to the consequences of more than 40 years of military control in the Occupied territory on the Sahrawi families, being separated, living in the refugees camps or in exile.

Indeed, the constant refusal of the Kingdom of Morocco to allow the Sahrawi people to freely exercise its inalienable right to self-determination and independence is the source of systematic and serious violations of a large range of human rights, not mentioning the violations of the International Humanitarian Law, in particular the violations of the Fourth Geneva Convention.

It is worth recalling here that in October 2015, in its Concluding Observation on the fourth periodic report of the Kingdom of Morocco to the Committee on Economic, social and cultural rights, 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 Sahrawi refugees displaced by the conflict in Western Sahara". And the Committee underscored that "It is also concerned that the Sahrawi's' right to participate in the use and exploitation of natural resources is still not respected".

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".

In this respect, many human rights organizations confirm the systematic character of the human rights violations committed by the Occupying power. The Occupied territory continues to live under repression, siege, illegal judgments made behind closed doors, and those who dare about it are always expelled. The Kingdom of Morocco and its allies are against giving MINURSO the prerogatives to control human rights in Western Sahara.

The presentations just made by the distinguished panellists have clearly illustrated that the Kingdom of Morocco policy towards Western Sahara cannot be sustainable without the political support of third main powers and their role in the European Union political organs and in the UN system.

For how long can strong democracies like France and Spain support an illegal military occupation? How can those governments explain to their own populations that they purposely and flagrantly violate the fundamental principles and norms they elaborated for the European Union and the United Nations?

On the one hand, they preach justice, democracy and the rule of law and, on the other, they practice the opposite. An example of this, among others, is the very recent signing of trade agreements between the European Union and the Kingdom of Morocco which include the Territory of Western Sahara in total contradiction with the judgments of the European Court of Justice, reaffirming that Western Sahara has a separate and distinct status and that the Kingdom of Morocco has no sovereignty over Western Sahara.

The Arab Sahrawi Democratic Republic urges the European Union and its member states to strictly abide to its principals and norms in order to support, in good faith, the efforts deployed by the UN Secretary General Special Envoy, President Horst Köhler, with a view to achieving a just, lasting, and mutually acceptable political solution, which will provide for the self-determination of the people of Western Sahara in the context of arrangements consistent with the principles and purposes of the Charter of the United Nations and the African Union's resolutions. The Arab Sahrawi Democratic Republic also urges the European Union and its member states not to get involved in the illegal exploitation of the natural resources of the Saharawi people.

Everyone has to consider that there is a new dynamic that breaks with the state of blockade and impasse that lasted for decades. Next month, a round of meetings and negotiations will be organized in Berlin and Geneva. We hope that they will address the substantive issues and move forward by taking practical steps to complete the decolonization of the Territory, giving voice to the peoples of the Non-Self-Governing Territories that must be heard as the Secretary-General Antonio Guterres said at the opening of the 2019 session of the Special Committee on Decolonization, where he reiterated the duty to support all the peoples of the Non-Self-Governing Territories in bringing the decolonization process to an end.

In concluding, I wish to echo 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" urging 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.

I salute all the countries and organizations that complied with this resolution, that have supported the struggle of the Saharawi people: there are many present here today who stood out throughout the 43 years of struggle; from the hospitality in their territory to different forms of support to the conference of the SADC countries that will host South Africa at the end of March. South Africa, always guided by the spirit of world leader Nelson Mandela.

Finally, I warmly thank the Geneva Support Group for Western Sahara. Due to the importance of its role, we wish it to continue growing and diversifying its methods and forms of support to the Saharawi cause in this City with its exceptional international dimension.

I thank you for your attention.

\*\*\*\*\*