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Joint written statement* submitted by American Association of Jurists, Asociación Española para el Derecho Internacional de los Derechos Humanos AEDIDH, Association Mauritanienne pour la promotion du droit, Association mauritanienne pour la transparence et le développement, Association Nationale des Echanges Entre Jeunes, International Fellowship of Reconciliation, Paz y Cooperación, Réseau Unité pour le Développement de Mauritanie, World Barua Organization (WBO), non-governmental organizations in special consultative status, International Educational Development, Inc., Liberation, Mouvement contre le racisme et pour l'amitié entre les peuples, World Peace Council, non-governmental organizations on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[10 February 2019]

* Issued as received, in the language(s) of submission only.



Western Sahara: How the European Union is blocking the implementation of resolution 1514 (XV)

Background

In 1963, the UN General Assembly approved¹ the report presented by the the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples and thereafter included Western Sahara in the list of Non Self-Governing Territories paving the way for the People originating from the Territory to freely exercise their inalienable Right to Self-determination and Independence. The Right to Self-determination includes the Permanent Sovereignty over the Natural Resources of the Territory.

In 1966, the General Assembly² invited the Administering Power (Spain) to determine at the earliest possible date the procedures for the holding of a referendum.

On 26 February 1976, Spain informed the Secretary-General³ that as of that date it had ended its presence in Western Sahara and relinquished its responsibilities over the Territory. After Spain withdrew from the Saharan colonized territory, Western Sahara became, and still is today, the only Non Self-Governing Territory listed by the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples that does not have an internationally recognized Administering Power.

The illegal occupation of the Non Self-Governing Territory by Morocco

On 16 October 1975, the International Court of Justice (ICJ) issued an Advisory Opinion⁴ 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 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”.

On 6 November 1975, King Hassan II ordered the army to invade Western Sahara, thus opening the way to the Moroccan population for the occupation of Western Sahara.

Throughout the years, Morocco has unlawfully annexed the territory it occupies, although the international community does not recognize to Morocco any sovereignty over the Territory.

The military occupation of Western Sahara and the continuing sponsored colonisation of the Territory by Moroccan civilians, as well as the Moroccan longstanding posture in the negotiations and the narrative presented by King Mohamed VI in his annual speeches celebrating the invasion March of 1975, shows that Morocco has no intention to end its occupation.

The systematic plundering of the natural resources in Western Sahara by Morocco, without the free, prior and informed consent of the internationally recognized representative of the people of Western Sahara⁵, as well as the serious and persistent violations of the Geneva Conventions and the systematic violations of Human Rights’, including of the right to development, committed by the Occupying Power, demonstrate that the Moroccan authorities have never taken into account the interests of the people under occupation.

The principle of good faith is a cardinal rule of treaty interpretation. The intention to apply the treaties with the European Union to the Territory of Western Sahara, as well as the recent actions of Morocco against the Western Sahara in the framework of the African Union,

¹ UN General Assembly resolution 1956 (XVIII)

² UN General Assembly resolution 2229 (XXI)

³ https://wikileaks.org/plusd/cables/1976USUNN00744_b.html

⁴ Western Sahara, Advisory Opinion, I.C.J. Reports 1975

⁵ UNGA res. 34/37 (21.11.1979) recognizes the Polisario Front as the representative of the people of Western Sahara

questions the good faith of Morocco's interpretation of international treaties in the case of Western Sahara.

The continuous breaches of fundamental principles of international law with regard to foreign occupation, demonstrates the illegal character of the occupation of Western Sahara.

The EU / Morocco agreements

The Euro-Mediterranean Agreement, that established an association between the European Communities and Morocco, was signed in Brussels on 26 February 1996⁶.

In 2012, the EU and Morocco concluded an agreement providing for reciprocal liberalization measures on agricultural products, processed agricultural products and fish and fishery products (the 'Liberalisation Agreement'). That agreement, which territorial scope depends on that of the EU-Morocco Association Agreement, was formally concluded by the EU on the basis of the Council decision 2012/497/EU of 8 March 2012⁷.

On 19 November 2012, the Polisario Front brought an action before the General Court seeking the annulment of that decision. Subsequently, the EU Council, Spain, France, Belgium, Germany, Portugal and the Confédération marocaine de l'agriculture et du développement rural appealed to the judgment of the General Court of the EU.

The Judgments of the Court of Justice of the European Union⁸

On 21 December 2016, the Grand Chamber of the Court of Justice of the European Union (CJEU) decided that the Association Agreement and the Liberalisation Agreement between the EU and Morocco were not applicable to Western Sahara.

In clarifying the applicable law, the CJEU underlined that it is not necessary to determine whether such implementation is likely to harm [the Sahrawi people] or, on the contrary, to benefit it" (§106). It is sufficient to point out that, "in either case, that implementation must receive the consent of [the people of Western Sahara]" (§106).

Moreover, the Court mentions the peace agreement concluded between Mauritania and the Polisario Front (§34). Finally, it refers twice to UNGA Resolution 34/37 that recognizes the Polisario Front as "the representative of the people of Western Sahara" (see §35; §105).

Therefore, no single agreement can legally cover the territory of Western Sahara without the free, prior and informed consent of the Saharawi people through its sole internationally recognized representative, the Polisario Front⁹.

On 27 February 2018, considering a request for a preliminary ruling concerning the validity of the Fisheries Partnership Agreement between the European Community and Morocco¹⁰, the Grand Chamber of the CJEU concluded that neither the Fisheries Partnership Agreement between the European Community and Morocco nor the Protocol between the EU and Morocco setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the EU and Morocco are applicable to the waters adjacent to the territory of Western Sahara.

On 30 November 2018, the 5th Chamber of the CJEU, called upon to rule on the application of the Euro-Mediterranean Air Services Agreement between the European Community and Morocco, noted that the term "territory" means, in the case of Morocco, "the land regions (mainland and islands), as well as the internal waters and territorial waters under its sovereignty or jurisdiction".

⁶ Approved on behalf of the Communities by Decision 2000/204 of the Council and the Commission of 24 January 2000 (OJ 2000 L 70, p. 1); see footnote no. 1 of the Court of Justice of the European Union's Press Release No 146/16 (12.12.2016)

⁷ Court of Justice of the European Union's Press Release No 146/16 (12.12.2016)

⁸ <http://curia.europa.eu/jcms/upload/docs/application/pdf/2016-12/cp160146en.pdf>

⁹ See supra, note 5

¹⁰ OJ 2006 L 141, p. 4

The Court concluded that, taking into account that the territory of Western Sahara is not part of the territory of Morocco; the Air Services Agreement must be interpreted as meaning that Western Sahara and the waters adjacent to it do not fall within the territorial scope of that Agreement.

The European Union circumvents the Court of Justice of the European Union's decisions

On 10 December 2018, the Committee on International Trade of the European Parliament adopted a report proposing the modification of the said agreement.

On 16 January 2019, the European Parliament adopted a resolution confirming the extension of the Association Agreement between the European Union and Morocco to the Occupied territory of Western Sahara.

On 23 January 2019, the Fisheries Committee of the European Parliament adopted the report presented by the French MP, Mr. Alain Cadec, recommending the extension of the applicability of the EU-Morocco Fishery Agreement to the waters adjacent to Western Sahara. The European Parliament is supposed to express itself on the matter on 13 February.

By adopting these decisions, which are contrary to the judgments of the EUCJ, the European Commission and the European Parliament violate the European Union's Treaty and the Principles of the Union's external action.

Recommendations

The undersigning non-governmental organisations call upon:

- the EU Commission and the EU Parliament to fully comply with the letter and the spirit of the European Union's Treaty and international law;
- Morocco to cease the illegal military occupation of Western Sahara and to negotiate in good faith with the Polisario Front 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;
- the members of the UN Security Council to include a Human Rights component in the MINURSO¹¹ mandate;
- the Office of the UN High-Commissioner for Human Rights to resume the Technical missions to Western Sahara and to the refugees' camps and to put in place a Technical cooperation and capacity building Programme with the Polisario Front;
- the Human Rights Council to create a mandate of Special Rapporteur on the situation of human rights in the Occupied Western Sahara.

Acción Solidaria Aragonesa (ASA), Adala UK, African Law Foundation (AFRILAW), Afrika Kontakt, 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 Saharaui, Asociación Ecuatoriana de Amistad con el Pueblo Saharaui (AEAPS), Asociación de Familiares de Presos y Desaparecidos Saharaui (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 Saharaui en España (APRASE), Asociación por la Protección de los Presos Saharaui en las Cárceles Marroquí, Asociación Riojana de

¹¹ UN Mission for the Referendum in Western Sahara

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 Lebrija, 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 de la Communauté Sahraouie en France, Association Culture Sahara, Association culturelle Franco-Sahraouie, Association des Femmes Sahraouies en France, Association of Humanitarian Lawyers, Association for the Monitoring of Resources and for the Protection of the Environment in Western Sahara (AMRPENWS), 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'Etat Marocain (ASVDH), Association des Sahraouis de Bordeaux, Association de la vie maghrébine pour la solidarité et le développement (AVMSD), 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 Brasileiro 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 Ecueménica 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 Plano 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 Sun, Comité de Protección de los Recursos Naturales, Comité Saharaui de Defensa de Derechos Humanos (Glaimim), Comité Saharaui de Defensa de Derechos Humanos (Smara), Comité Saharaui de Defensa de Derechos Humanos (Zag), Comité Saharaui por el Monitoreo de los Derechos Humanos (Assa), Comité de Solidaridad Oscar Romero, Comité Suisse de soutien au Peuple Sahraoui, Comité de Víctimas de Agdaz y Magouna, Comunidad Saharaui en Aragón, Comunidad Saharaui en Castilla y León, Comunidad Saharaui en Castilla la Mancha, Comunidad Saharaui en Catalunya, Comunidad Saharaui en Granada, Comunidad Saharaui en Las Palmas, Comunidad Saharaui en Murcia, Coordinadora Estatal de Asociaciones Solidarias con el Sáhara (CEAS – Sáhara), Coordinadora de Gdeim Izik para un Movimiento Pacífico, Coordinadora de los Graduados Saharauis Desempleados, Coordinadora d'Organizacions No-Governmentals de Cooperació al Desenvolupament (CONGDIB), Coordinadora de las ONGs en Aaiún, Coordinadora Saharaui de Derechos Humanos de Tantan, DISABI Bizkaia, Emmaus Åland, Emmaus Stockholm, Equipe Média, Federació ACAPS de Catalunya, Federació d'Associacions de Solidaritat amb el Poble Sahrauí del País Valencià, Federación Andaluza de Asociaciones Solidarias con el Sahara (FANDAS), Federación de Asociaciones de Amigos del Pueblo Saharaui de Extremadura (FEDESAEX), Federación de la Comunidad de Madrid de Asociaciones Solidarias con el Sahara (FEMAS Sahara), Federación Estatal de Instituciones Solidarias con el Pueblo Saharaui (FEDISSAH), Forum Futuro de la Mujer Saharaui, Freiheit für die Westsahara e.V., Fundación Mundubat, Fundación Sahara occidental, Giuristi Democratici, Groupe Non Violence Active (NOVA SAHARA OCCIDENTAL), Grupo por la renuncia de la Nacionalidad Marroquí, Ibsar Al Khair Association for the Disabled in Western Sahara, Liga de Defensa de los Presos Políticos Saharaui, Liga de Deportistas Saharauis en España, Liga de Estudiantes Saharauis en España, Liga de Periodistas Saharauis en España, Liga Saharaui de defensa de Derechos Humanos y Protección de RW-Bojador, Ligue des Jeunes et des Etudiants Sahraouis en France, National Television Team, Norwegian Support Committee for Western Sahara, Observatoire des Médias Saharaouis pour documenter les violations des droits de l'homme, Observatorio Aragonés para el Sáhara Occidental, Observatorio Asturiano de Derechos Humanos para el Sáhara Occidental (OAPSO), Observatorio Saharaui por el Niño y la Mujer, Observatorio Saharaui de Protección del Niño, Observatorio Saharaui de Recursos Naturales, Organización Contra la Tortura en Dakhla, Organización Saharaui por la Defensa de las libertades y la dignidad, Pallasos en Rebeldía y Festiclown, Por un Sahara Libre, Sahara Euskadi Vitoria, Sahara Gasteiz Vitoria, Saharawi Advocacy Campaign, Saharawi Association for Persons with Disabilities in Western Sahara, Saharawi Association in the USA (SAUSA), Saharawi Campaign against the Plunder (SCAP), Saharawi Center for Media and Communication, Saharawi Media Team, Saharawi Voice, Schweizerische Unterstützungskomitee für die Sahraouis, Sindicato Español Comisiones Obreas (CCOO), Solidariedade Galega col Pobo Saharaui (SOGAPS), Stichting Zelfbeschikking West-Sahara, Tayuch Amurio, Tawasol Lluidio, The Australian Western Sahara Association, The Icelandic Western Sahara Association, The Swedish Western Sahara Committee, Unión de Asociaciones Solidarias con el Sáhara de Castilla y León, Union des Ingénieurs Sahraouis, Unión de Juristas Saharauis (UJS), Unión Nacional de Abogados Saharauis, Unión Nacional de Estudiantes de Saguia El Hamra y Rio de Oro (UESARIO), Unión Nacional de la Juventud de Saguia El Hamra y Rio de Oro (UJSARIO), Unión Nacional de Mujeres Saharauis (UNMS), Unión Nacional de Trabajadores de Saguia El Hamra y Rio de Oro (UGTSARIO), Unión de Periodistas y Escritores Saharauis (UPES), US Western Sahara Foundation, VZW de Vereniging van de Sahrawi Gemeenschap in België, Western Sahara Resource Watch España (WSRW España), Western Sahara Times NGO(s) without consultative status, also share the views expressed in this statement.