



General Assembly

Distr.
GENERAL

A/HRC/10/NGO/23
4 March 2009

ENGLISH AND FRENCH ONLY

HUMAN RIGHTS COUNCIL
Tenth session
Agenda item 3

PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT

**Written statement* submitted by France Libertés: Fondation Danielle Mitterrand,
a non-governmental organization in special consultative status**

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

[12 February 2009]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Natural Resource Pillage in Western Sahara

The issue of safeguarding natural resources is one of the central problems for non-autonomous peoples, since occupation involves land dispossession and therefore the exploitation of resources for the benefit of a third State is a corollary of dispossession.

Western Sahara since 1963 is included among the non self-governing territories, according to Chapter XI of the United Nations Charter. A flagrant example of failed decolonisation.

Several elements are at the root of this failure.

In 1975 the withdrawal of Spain from her last colony triggered a process of illegal partitioning of the territory by Morocco and Mauritania (Madrid Accords), followed by a war (the Green March) fought between the Sahrawi people and Morocco, which led to Morocco's illegal occupation of the territory. Despite the cease-fire signed in 1991 under United Nations auspices, and the peace plan aimed at settling the dispute, as well as all the later initiatives, no definitive settlement has yet been reached.

In 1974 the United Nations General Assembly passed Resolution 3292, through which it requested the International Court of Justice for an advisory opinion on the relations between Western Sahara, on the one hand, and the Kingdom of Morocco and the Mauritanian entity, on the other. The advisory opinion pronounced in October 1975 established clearly in paragraph 162 that the territory in question could not be considered a *terra nullius*, and further that the historical ties of Morocco and the Mauritanian entity with this territory and its population in no way granted those two countries any sovereignty rights over the land. The Court further stated that the historical ties that existed – ties of vassalage – could not be construed in any way as limiting the rights of the Sahrawi people over the territory. The Court recommended that the decolonisation of Western Sahara should continue pursuant to Resolution 1514 (XV). The Green March undoubtedly constituted a breach of Article 2 of the United Nations Charter (peaceful settlement of disputes).

Let us also mention the Madrid Accords, agreed upon by Spain, Morocco and Mauritania in November 1975, which established a tripartite administration without the agreement either of the Sahrawi people or of the United Nations. The Madrid Accords are manifestly null and void. As Hans Korrell, a legal expert and former UN Under-Secretary-General for Legal Affairs, declared: Spain had no right to transfer the status of administrative power to anyone at all; and, in any case, these Accords had no power to affect the status of Western Sahara as a non-autonomous territory. As a result, Morocco's occupation is a violation of international law. Further evidence is provided by the fact that Morocco does not appear as the administrative power of Western Sahara in the list of non self-governing territories recognized by the United Nations.

The Department of Legal Affairs has further stated that “exploitation and pillage of marine resources and other natural resources of colonial or non self-governing by foreign economic interests, in violation of the relevant UN resolutions, jeopardizes the integrity and prosperity of such territories.” And further: “any administrative power that deprives the colonised peoples of non self-governing of the exercise of their legitimate rights over natural resources ... violates the obligations incumbent upon them pursuant to the United Nations Charter.” In relation to the

exploitation of the natural resources of a non-autonomous territory, Hans Korrell stressed that such exploitation is not allowed unless it is for the benefit of the people inhabiting the territory, and unless it is done on their behalf and in consultation with their representatives. Further, referring to existing contracts between Morocco and the US firm Kerr McGee and the French TotalFinaElf on prospecting in newly discovered oil reserves off the coast, Korrell declared: "Despite the fact that these contracts signed with foreign companies are not in themselves illegal, we must conclude that, if any prospecting or exploitation activities are to be undertaken against the interests and will of the Sahrawi people, then they would be clearly in violation of international law as applicable to activities pertaining to natural resource exploitation in non self-governing."

As a result of the criticism and doubts raised as to the legitimacy of the operation, the Norwegian firm TGS-Nopec (which had been hired by Kerr-McGee and TotalFinaElf for the prospecting) withdrew from the project. But that did not stop the operation: when Kerr-McGee's activities were banned by the Norwegian Government, the operation was taken over by its partner Kosmos Energy, based in Dallas and granted a prospecting licence by the Moroccan State oil company, ONHYM, which also hired the Norwegian company Fugro-Geoteam to carry out the prospecting. And this was done using the largest vessel of its kind, built last year, supported by several shuttle vessels delivering supplies.

The pillage of the Sahrawi people's natural resources extends, however, to several other fields, such as fishing, phosphate exports, and even including the sale of its sand to construction firms in the Canary Islands or to be used in the creation of beaches in the volcanic areas of Madeira. The last shipment occurred on 31 May 2008 and consisted of 2800 tons of sand used for the reconstruction of Caheta beach which had been devastated by a hurricane.

The issue of fishing deserves a more in depth study, since it is an example of the involvement of foreign States in the pillage of Western Sahara's natural resources. The European Union has signed an unfair agreement with Morocco for fishing activities in Sahrawi territorial waters: of the 1,200,000 tons of fish caught yearly by European Union industrial fishing off the African coasts, about 900,000 tons come from the coasts off Western Sahara. The volume of this market is worth more than 1,000 million Euros: these profits strengthen the occupier and benefit those who fish illegally off the Sahrawi coast.

This deplorable situation is further aggravated by the ambiguity that persists around the issue of the illegality of the presence of Morocco in Western Sahara, and Morocco's domination over its territorial waters. The ambiguity is based on a crucial point: the definition of the limits of Morocco's territorial waters. In its negotiations with Morocco on fishing in waters legally pertaining to Western Sahara, the European Union is co-responsible internationally for the illegal exploitation of the natural resources of a still non-autonomous territory. Thus, once the new State will finally have achieved independence, it will be able to claim compensation, just like Namibia claimed compensation from those who had negotiated illegally with the Pretoria regime.

In addition to the pillage, one must also consider the consequences of a massive use of drift gillnets which endanger the conservation of marine species.

Since they are vital products for agriculture, phosphates are a resource greatly in demand in most of the world's countries. The production in the Bou Craa mines, the exploitation of which began under Spanish occupation in 1970, today amounts to about 3 million tons, i.e. 10% of Morocco's total production. The total contribution to that country's national revenue has been considerable, for all the years since its occupation began. A conveyor belt, which is one of the biggest in the world, transports phosphates for over 100 km, all the way to El Ayoun harbour. There, the infrastructure was designed specifically for the shipment of phosphates, and mineral-transport vessels as well as high seas cargo-ships export this mineral to several countries in Europe and Asia.

A number of Non-Governmental Organizations have denounced this situation, time and again, over a long period ; they have also released the names of firms involved in the import of the mineral. Some companies, demonstrating their honesty, have provisionally suspended all phosphate imports; others have stated that these activities are totally legal according to international law, in their opinion; others still have replied that these trade activities benefit the Sahrawi people as well, whereas the situation is in fact the opposite, as was clearly documented by a mission report released in 2003 by France Libertés. Additionally, quite apart from the pillage of this extremely important resource, it is worth recalling that the majority of mineworkers was fired over the past years: today, of the 200 or so who still work in the mines, most have reported violation of their economic and social rights, systematic exclusion and marginalisation within the phosphate industry, as well as marked treatment inequalities between their conditions and those of Moroccan workers, including demotions and lack of opportunities for promotion.

A number of United Nations resolutions point to the fact that any phosphate extraction and trade activity in Western Sahara, spoliation of fishing resources off the coast of Western Sahara, or oil extraction are in violation of international law. Despite this, the situation persists. We can only conclude by stressing once more that these injustices, perpetrated against the will and interest of the Sahrawi people and to their detriment, continue amidst the total indifference of the international community.
