

## **Western Sahara and its Phosphate Rock: is Australia in a Hard Place?**

**Hosted by The Australian Institute of International Affairs**

**Wednesday 5th October, Melbourne**

The speakers at the event were the Saharawi representative to Australia Mr Kamal Fadel and Mr Tim Robertson SC, who is a senior barrister and civil libertarian with a very broad practice including international law.

The Saharawi representative Kamal Fadel thanked the prestigious Australian Institute of International Affairs for holding the event which is pertinent given that the issue of Western Sahara is being discussed at the UN Fourth Committee on Decolonization and also given the tragic events taking place in the southern Saharawi city of Dakhla.

**Kamal Fadel** provided a historical background of the issue of Western Sahara and explained the UN involvement in the decolonisation process of the non-self-governing territory since 1963.

He outlined how the failure of the UN in organising the referendum of self-determination in Western Sahara is due to Morocco's obstructions and delaying tactics to avoid the verdict of the Saharawi people and also due to the unwillingness of some members of the Security Council to put pressure on Morocco to abide by international law and UN resolutions.

Mr Fadel underlined that there is a human tragedy taking place in the occupied areas of Western Sahara as a result of Moroccan gross human rights violations. He emphasised that since 25 September 2011, Moroccan settlers aided and abetted by the security forces have attacked Saharawi civilians in the city of Dakhla, beating them, ransacking their houses and destroying their possessions. They also burnt cars, shops and a private school belonging to a Saharawi. Dozens of young people have been arrested and tortured. A young Saharawi Maichan Mohamed Lamin Lehbib, aged 29, was killed and many others are seriously injured. Moroccan security forces and police did not act to protect the lives and property of the indigenous Saharawis. The city is currently under a military siege while security forces are arresting Saharawi human rights activists on a daily basis.

He said that the current situation in the occupied areas demonstrates clearly the urgent need for the inclusion of human rights monitoring in the mandate of the UN.

The Saharawi Representative also spoke about Morocco's illegal trade in Saharawi natural resources. He said that Morocco is violating international law and disregarding the UN legal opinion of 2002 concerning the exploitation of Saharawi natural resources.

**Tim Robertson** said the International Court of Justice was very clear regarding the fact that Morocco had no historical title or sovereignty over Western Sahara and that its people were entitled to the right of self-determination.

He mentioned that Morocco is not considered as administrating power of Western Sahara but to be an occupier. He added that the doctrine of self-determination involves a free and

voluntary act by the people of a former colony on who would be their sovereign. Morocco does not have a right to force the option of autonomy or to exclude the option of independence.

He said that the case of Western Sahara is the most shameful for the international community because the Saharawi people have an inalienable right of self-determination but have not been given the opportunity to exercise it. Resolution after resolution in the UN supporting such a right has been passed. A third of the nations of the world have recognised the Saharawi Republic as a legitimate sovereign state in exile. It is also a full member of the African Union.

Despite all of this the international community has done nothing to prevent Morocco from building the military wall dividing Western Sahara and from exploiting Saharawi natural resources. He said that Australia is one of largest purchasers of phosphate from Western Sahara.

He further added that Australian corporations are buying Saharawi phosphate from a seller (Morocco's OCP) which doesn't have a title over the goods it is selling. He mentioned that there is a principle in law called *Nemo dat quod non habet*, which means that no one can gain good title over goods if the seller didn't have good title. "How does Morocco pass on good title to phosphate ores from Bou Craa?" he asked, adding, "the company that is selling is an organ of state, how does it get its title?"

The Australian government has said that it is not legally obliged to take action to prevent the importation of goods from Western Sahara contrary to the norms of self-determination found in the Charter of the United Nations because the Security Council has not declared trade sanctions on such goods. While it is true that that no sanctions have been declared, Mr Robertson said, the Australian government can still act because all countries have a duty to implement fundamental international norms.