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**Promotion and protection of all human rights,
civil, political, economic, social and cultural rights,
including the right to development**

Joint written statement* submitted by the World Federation of Trade Unions (WFTU), a non-governmental organization in general consultative status; the American Association of Jurists (AAJ), the Women's International League for Peace and Freedom (WILPF), France-Libertés: Fondation Danielle Mitterrand, non-governmental organizations in special consultative status; International Educational Development, Inc., Mouvement contre le racisme et pour l'amitié entre les peuples (MRAP), 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.

[17 May 2010]

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

Transnational Corporations and Human Rights 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, as a corollary, the exploitation of resources for the benefit of a third party.

Western Sahara, invaded and occupied by the Kingdom of Morocco after the unilateral withdrawal of Spain in 1975, has been included since 1963 among the non self-governing territories¹ and continues to be considered as such in accordance with international standards. The occupation of the territory that still persists today is totally illegal under the terms of international law. In point of fact, by claiming that Western Sahara is an integral part of its territory the Kingdom of Morocco ignores the 1975 International Court of Justice Advisory ruling², the UN Charter and numerous UN Security Council and General Assembly Resolutions³, as well as the 2002 juridical opinion by former under-secretary-general for legal affairs and legal counsel of the United Nations, Hans Corell⁴, all of which have stressed the current international status of Western Sahara as one of a non self-governing territory pending the result of a self-determination referendum, apparently largely forgotten, with all the attributes this status entails such as the right of a people to control and exploit all its own resources.

This flagrant example of failed decolonization has had and still has many negative implications as regards the sovereignty of the Sahrawi people over the exploitation of their natural resources mercilessly plundered both by Moroccan enterprises and transnational corporations. Such illegal exploitation concerns products of central importance for the industry of third party countries, such as phosphates and oil.

In point of fact, Western Sahara possesses one of the world's largest phosphate deposits. In addition, chances are that there are considerable reserves of oil and gas along the coast.

These valuable natural resources have been a major driving force behind Morocco's occupation of Western Sahara and its illegal endeavours have received solid backing from the international trade community. The companies involved claim that their contribution is intended to provide a positive economic development in the Kingdom of Morocco. However, Western Sahara, not being part of the Kingdom of Morocco, and the latter not even appearing on the UN list of administrating powers, this "development" becomes instead an active contribution, supporting Morocco's illegal claim to the neighbouring country.

A number of international companies have thus become today political actors that reap profits whilst the Sahrawi people are not being allowed any benefits resulting from the profitable commercial activities in their homeland.

* Bureau international pour le respect des droits de l'homme au Sahara Occidental (BIRDHSO), Association of Humanitarian Lawyers (AHL), NGOs without consultative status, also share the views expressed in this statement.

¹ UN Charter - Chapter XI, Art. 73.

² Western Sahara, Advisory Opinion. I.C.J reports 1975, p. 12.

³ Inter alia: S.C. Res.377 (1975). Res.379 (1975). Res.380 (1975). Res.621 (1988). Res.658(1990). Res.690 (1991). Res.725 (1991). Res.47/25 (1992). Res. 907 (1994) and G.A. Res.3162 (XXVIII) 1973. Res.3458 (XXX) 1975. Res.31/45 1976. Res.31/22 1977. Res.33/31 1978. Res.46/67 1991.

⁴ UN doc. S/2002/161.

This is contradictory to the requirement to ensure the control of resources by the local people and undermines the wishes and interests of the majority of the Sahrawi people. The illegality of these activities has been underscored by a number of UN resolutions and international instruments as well as by former legal counsel of the United Nations, Hans Corell who stated as early as 2002 that “the conclusion is, therefore, that, while the specific contracts which are the subject of the Security Council’s request are not in themselves illegal, if further exploration and exploitation activities were to proceed in disregard of the interests and wishes of the people of Western Sahara, they would be in violation of the principles of international law applicable to mineral resource activities in Non-Self-Governing Territories.”⁵ A concept he reiterated in 2008 with special reference to EU-Morocco Fishing Partnership Agreement.⁶

Unfortunately rare are the cases in which governmental authorities verify whether their own or their multinational’s phosphates imports, allegedly coming from Morocco do not come instead from Western Sahara and whether the income from their extraction goes to the people of Western Sahara. The same applies to oil prospection and extraction activities. In many cases of both phosphates and oil, transnational corporations clearly state that their activity actually concerns Western Sahara.

Despite 35 years that have passed, none of the countries that repeatedly declares its commitment to respecting human rights has taken any positive action – except Sweden and Norway. European Union countries as well as an astonishing number of other countries in all the regions of the world keep quiet about Western Sahara.

The peculiar status of Western Sahara – that of an occupied non self-governing territory still waiting for a self-determination referendum that Spain should have organized in 1975 – has caused a paradoxical situation where the issue of corporations exploiting the natural resources of a territory without their licences being issued by a legitimate authority. We draw attention in particular to German-based BASF, French/Spanish FMC Foret and the Moroccan state oil company ONHY and their mineral mining activities in Western Sahara.

In 2006, ONHYM gave a licence for on-shore prospecting to the Irish oil company Island Oil and Gas, for an area in the north-eastern parts of Western Sahara. The licence was actually given to a group consisting of Island Oil and Gas, San Leon Ltd. and Long Reach Oil & Gas Ventures (previously GB Oil & Gas Ventures), but Island is in fact the one behind the deal. These licences have been renewed several times since. From January 2008, Island Oil and Gas has also had a petroleum agreement for the area around the capital El Aaiun, what ONHYM calls the Tarfaya block.

As to the off-shore activity, the American company Kosmos Energy got its first foothold in Western Sahara in October 2004, and has remained there since. From January 2009, Kosmos Energy has been carrying out seismic surveys south of Boujdour through the Dutch-Norwegian company Fugro-Geoteam. This assignment by Komos Energy resulted in strong protests from many sectors and a complaint was filed by the Norwegian Support Committee for Western Sahara in December 2009 for violation of OECD’s guidelines for multinational companies. On April 23, 2009 the Dutch seismic services firm Fugro NV, and its Norwegian subsidiary Fugro-Geoteam, have stated in a letter to the Norwegian Ministry of Foreign Affairs that they do not want to undertake any more assignments in Western Sahara under the current political situation in the country.

⁵ See footnote 4.

⁶ Conference on Multilateralism and International Law with Western Sahara as a case study. South African Department of Foreign Affairs and University of Pretoria. December 6 2008.

Though encouraging for future similar endeavours aimed at protecting Sahrawi people's rights, this gesture is nevertheless quite useless. The relevant data have already been gathered and delivered to the American company Kosmos Energy that still maintains its contract for offshore oil exploration; so it would seem that Fugro-Geoteam has already paved the way for a further breach of international law, as stated by Ronny Hansen of the Norwegian Support Committee for Western Sahara.

It is indeed very troubling that such multinational corporations would rely on the government of the Kingdom of Morocco for issuing operational agreements and use permits in that area when the status of Western Sahara is very clear, following the ruling by the International Court of Justice as described before. It is even more troubling that the Commission of the European Union has granted the Kingdom of Morocco an Advanced Status cooperation agreement as well as a Fisheries Partnership Agreement (FPA) that does not exclude Western Sahara from its purview and therefore giving a tacit go ahead for the activities of the multinational corporations, and this despite the negative opinion given by the EU own legal services on 13 July 2009 and publicly debated on 28 January 2010.⁷

Applying the three part policy framework - protect, respect, remedy – (A/HRC/11/13) submitted by Special representative of the secretary General, Professor John Ruggie, already soundly endorsed by the Council in its 13th Session (June 2009) and further detailed in the present report (A/HRC/14/27), concerning both State duty to protect and corporate responsibility to respect⁸ we find that the corporations, the Kingdom of Morocco, the States of the European Union, and any other States whose corporations operate in Western Sahara without the permission of the Sahrawi authorities are in clear breach of this framework. The States whose corporations operate in Western Sahara have failed in their duty to protect the rights at issue, the corporations have not undertaken due diligence to ensure that their proposed actions fully conform with human rights, including especially the right to self-determination. Neither States nor corporations are allowed to claim ignorance, and it would severely tax credibility for any of these corporations to claim they did not know of the status of Western Sahara.

Conclusion

In light of the present paradoxical situation that the lack of international attention and political will have allowed to develop in Western Sahara, highly conducive to widespread, serious and persistent violations of human rights,

Taking into consideration the provisions and obligations clearly spelled out in the relevant international instruments which have been neither respected nor enforced up to now, including the right to self-determination by means of a just referendum that awaits since 1975,

On the basis of authoritative elements indicating that exploitation of natural resources in Western Sahara by third parties is illegal and that EFTA⁹ and some countries like Norway have been taking lately some steps to better check and/or terminate their contracts as well as operations planned in Western Sahara,

⁷ EU Legal Service Opinion SJ-0085/06 as to the compatibility of the FPA with the principles of international law

⁸ See Report A/HRC/14/27. Section III, the State duty to protect, (B) paragraphs 27, 32, (F) paragraph 52. Section IV, The corporate responsibility to respect, paragraph 55, (A) paragraphs 59, 60, (C) paragraphs 79, 80, 81.

⁹ European Free Trade Association, announcement made by Norway Minister for Foreign Affairs on May 11th, 2010

We, the undersigned NGOs urge:

- the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises to thoroughly investigate and report to the Human Rights Council on the violations of the international norms by the Kingdom of Morocco and the transnational corporations in Western Sahara due to the exploitation of the natural resources;
 - the Human Rights Council to fully comply with its mandate, as defined in GA resolution 60/251, and to resume its consideration of the issue of Western Sahara with a view to evaluate the human rights violations in the non-autonomous territory of Western Sahara.
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