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Written statement* submitted by the International Youth and Student Movement for the United Nations, a non-governmental organization in general consultative status

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

[18 August 2017]

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

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Western Sahara: the right to self-determination and independence.

Introduction

This written statement is submitted with a view to assist in the consideration at the 36th session of the Human Rights Council of the Report of the Working Group on the Universal Periodic Review of Morocco. As referred to in the report the country under review use the term “Moroccan Sahara” as a substitute for the established United Nations term of the non-self-governing territory of Western Sahara which is now largely under the control of Morocco. This matter require careful scrutiny in order for the Council to deliberate on the outcome of the review.

Historical and legal background

In 1963, the UN General Assembly decided to include Western Sahara in the list of Non Self-Governing Territories¹, to which UNGA Resolution 1514 (XXV) entitled “Declaration on the granting of Independence to colonial countries and peoples” applies.

On 6 November 1975, the International Court of Justice released an Advisory Opinion² in which it stated, inter alia, that they had not found legal ties or international recognition of territorial sovereignty between Western Sahara and the Moroccan State.

On the same day of the publication of the Advisory Opinion by the International Court of Justice, King Hassan II of Morocco, called for the organization of a “peaceful march” (so-called Green march) into Western Sahara, which brought together 350,000 people and marked the beginning of the occupation of Western Sahara.

In view of the collision between, on the one hand, the UN principles and, on the other hand, the position of the Morocco, the UN Security Council adopted Resolution 380 (6-11-1975) which “Deplores the holding of the march”. The Security Council called on Morocco to “immediately to withdraw from the Territory of Western Sahara all the participants in the march”.

Subsequently, the UN General Assembly³ reaffirmed the inalienable right of the people of Western Sahara to self-determination and independence in accordance with the Charter of the United Nations, deeply deplored the continued occupation of Western Sahara and urged Morocco to terminate the occupation of the Territory of Western Sahara.

Applicability of International Humanitarian Law

The invasion and occupation of a large part of Western Sahara by the Morocco obliges the latter to respect International Humanitarian Law.

By continually promoting on a large scale the transfer of Moroccan citizens into the occupied Territory of Western Sahara, Morocco constantly violates, since 1975, Article 49 of the IVth Geneva Convention.

The principles and the practice

UN General Assembly Resolution 2625 (XXV) of 1970, containing the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the UN Charter, enumerates a series of principles which are binding on all States as peremptory norms. Among those principles, the principle that States shall

1 UNGA Resolution 1956 (XVIII)

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

3 UNGA Resolutions 34/37 (21 November 1979) and 35/19 (11 November 1980)

refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State and the principle of equal rights and self-determination of peoples.

The Declaration contained in UN GA Resolution 2625 (XXV) explicitly states that: “The territory of a colony or other Non-Self-Governing Territory has, under the Charter, a status separate and distinct from the territory of the State administering it; and such separate and distinct status under the Charter shall exist until the people of the colony or Non-Self-Governing Territory have exercised their right of self-determination in accordance with the Charter, and particularly its purposes and principles.”

The Declaration also stresses that “All States shall comply in good faith with their obligations under the generally recognized principles and rules of international law with respect to the maintenance of international peace and security...”

Guided by the constant international legal doctrine on the matter, States, regional organizations and the UN have followed a uniform common practice. Thus, no State or Regional or International Organization recognizes the sovereignty of Morocco over Western Sahara.

The decision taken by the Peace and Security Council of the African Union on the situation in Western Sahara (20 March 2017)⁴ “recalls decision EX.CL/Dec.758 (XXII) adopted by the 22nd Ordinary Session of the Executive Council held in Addis Ababa, from 24 to 25 January 2013, requesting the (AU) Commission to take all necessary measures for the organization of a referendum for the self-determination of the people of Western Sahara and also recalls decision Assembly/AU/629 (XXVIII) adopted by the 28th Ordinary Session of the Heads of State and Government held in Addis Ababa, from 30 to 31 January 2017, in which the Assembly reiterated its call to the UN General Assembly to determine a date for the holding of the self-determination referendum for the people of Western Sahara and protect the integrity of the Western Sahara as a non-self-governing territory from any act which may undermine it. The Council also underlines other relevant provisions of the Assembly’s decision relating to urging the UN Security Council to fully assume its responsibilities in addressing the issues of the respect of human rights and the illegal exploration and exploitation of the Territory’s natural resources. Furthermore, the Council notes with deep concern that four decades after the onset of the conflict in Western Sahara and fifty four years after the decision to decolonize Western Sahara, all efforts aimed at finding a solution have so far failed to achieve the expected results.”

The Morocco – US Free Trade Agreement signed on 15 June 2004, which came into effect on 1st January 2006, excludes the Territory of Western Sahara. In a letter to Congressman Joe Pitts, Robert Zoellick, the then United States Trade Representative said: “The United States and many other countries do not recognize Moroccan sovereignty over Western Sahara and have consistently urged the parties to work with the United Nations to resolve the conflict by peaceful means.”⁵

Similarly, the Free Trade Agreement between the EFTA states (Norway, Switzerland, Iceland, Liechtenstein) and Morocco, of 19 June 1997, is not applicable to Western Sahara. In 2007, Martin Zbinden, Head of Free Trade Agreement at the Swiss State Secretariat for Economic Affairs declared that “Since Switzerland does not recognise the Moroccan annexation, the free trade agreement between EFTA and Morocco is not applicable for Western Sahara”. On 11 May 2010, the Norwegian Minister of Foreign Affairs, Mr. Jonas Gahr Støre, declared in the Norwegian Parliament that “[...]It must also here been taken as a point of departure the internationally recognized borders of Morocco. Since Morocco does not exercise internationally recognized sovereignty over Western Sahara, Western Sahara is not seen as a part of Morocco’s territory in relation to this agreement. The Free Trade Agreement is thus not applicable to goods from Western Sahara.”⁶

⁴ PSC/PR/COMM(DCLVIII)

⁵ <http://web.archive.org/web/20110629044535/http://www.house.gov/pitts/press/releases/040722r-FTAwahara.htm>

⁶ <http://www.wsrw.org/a159x1410>

In its judgment concerning the Association agreement and the Liberalization agreement between the EU and Morocco (21 December 2016), the Grand Chamber of the Court of Justice of the European Union⁷ (CJEU) decided that the two agreements are not applicable to Western Sahara.

Relying on the right to self-determination of the Sahrawi people, the CJEU ruled that Western Sahara has a “separate and distinct status [...] in relation to that of any State, including the Kingdom of Morocco”.

The CJEU pointed out that besides the principle of self-determination, this “separate and distinct status” of Western Sahara in relation to Morocco also derives from the international borders that have been established a century ago⁸ and confirmed in an international agreement concluded by the Polisario Front and Morocco in 1979.

In June 2017, the High Court of South Africa in Port Elisabeth¹⁰ (June 2017) hearing a case concerning a phosphate cargo originating from Western Sahara, reaffirmed that the Non Self-Governing Territory has a separate and distinct status in relation to that of the Kingdom of Morocco and that the Moroccan occupation of a large part of Western Sahara has not affected the international status of the that Territory.

Regardless of the international law principles and norms, as well as, of the International Court of Justice’s Advisory Opinion of 1975, of the many UN resolutions and of the decisions of national and international tribunals, Morocco persists in considering the large part of the Non Self-Governing Territory of Western Sahara it occupies as an integral part of its national territory.

Recommendations

The Human Rights Council should with regard to the Report of the Working Group on the Universal Periodic Review on the Kingdom of Morocco consider the following recommendations:

- Morocco to agree on the establishment of a permanent Human Rights monitoring mechanism in Western Sahara within the UN Mission for the Referendum in Western Sahara (MINURSO)
- Morocco to respect the status of Western Sahara as a Non Self-Governing Territory and to fully cooperate with the UN Mission for the Referendum in Western Sahara (MINURSO) with the view of achieving its mission to organize the referendum in order to implement the inalienable right of the people of Western Sahara to self-determination and independence in accordance with the Charter of the United Nations.

⁷ <http://curia.europa.eu/jcms/upload/docs/application/pdf/2016-12/cp160146en.pdf>

⁸ The southern and eastern boundaries with the Islamic Republic of Mauritania were established by the “Convention pour la délimitation des possessions françaises et espagnoles dans l’Afrique occidentale, sur la côte du Sahara et sur la côte du Golfe de Guinée”, signed in Paris on 27 June 1900. The Northern boundary of Western Sahara with the territory of the Kingdom of Morocco was delimited by two conventions, the Paris Convention signed on 3 October 1904, and the Madrid Convention signed on 27 November 1912. Its delimitation has been slightly corrected by the Madrid Convention signed on 19 December 1956.

⁹ The paragraph 3 of the Lisbon Compromise Agreement on Troop Confinement, concluded on 29 August 1997, reads as follows: “This compromise shall in no way change, alter or otherwise affect the internationally recognized boundaries of Western Sahara, and shall not serve as precedent for any argument that such boundaries have changed or been altered.”

¹⁰ <http://www.saflii.org/za/cases/ZAECPEHC/2017/31.html>