Report on treaty bodies and Western Sahara: the CCPR, CESCR and CERD Committees

This study aims to analyze the status of the Territory of Western Sahara, as a Non-Self-Governing Territory and, as partially occupied Territory, in the system of bodies established under human rights treaties.

This Report, while focusing on three of the treaty body Committees (the Human Rights Committee-CCPR; the Committee on Economic, Social and Cultural Rights-CESCR; and the Committee on the Elimination of Racial Discrimination-CERD), presents conclusions and results that may be extrapolated to the other Committees responsible for evaluating the compliance by State Parties with the respective international human rights instruments.

To this end, the first section of the study covers the legal basis on which the question of Western Sahara is grounded. The second part offers a comparative analysis of how human rights treaty bodies have acted, especially considering the reports submitted by the Kingdom of Morocco. The third part presents an analysis is set out on the conformity or not, with the Harmonized Guidelines, of the reports submitted by the Kingdom of Morocco. Conclusions are set out in the final section of the report.

PART ONE: THE LEGAL STATUS OF WESTERN SAHARA

1. The organizational principle of unity of administrative command at the United Nations.

   The UN, its specialized bodies, organizations and agencies are governed by the principle of unity of administrative command, to the extent that the rules and principles that inspire the Organization also govern the functioning and activity of the other bodies, organizations and agencies of the United Nations system.
2. On 14 December 1960, the General Assembly of the United Nations adopted Resolution 1514 (XV), entitled "Declaration on the Granting of Independence to Colonial Countries and Peoples," which reads as follows:

   All peoples have the right to self-determination; by virtue of that right they freely determine their political status. Immediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire. All States shall observe faithfully and strictly the provisions of the Charter of the United Nations on the basis of respect for the sovereign rights of all peoples and their territorial integrity.
3. On 20 December 1966, the General Assembly of the United Nations adopted Resolution 2229 (XXI) on the Question of Ifni and Spanish Sahara:

   Reaffirms *the inalienable right of the people of the Spanish Sahara to self-determination and invites the Spanish Government, as the administering Power, to determine at the earliest possible date the procedures for the holding of a referendum under United Nations auspices with a view to enabling the indigenous population of the Territory to exercise freely its right to self-determination.*
4. On 24 October 1970, the General Assembly of the United Nations adopted Resolution 2625 (XXV), entitled "Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations," specifying that

Every State has the duty to respect the right of self-determination of peoples in accordance with the provisions of the Charter, and 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.*

5. On 10 July 1974, Spain announced its will to enact a new political statute for the Sahara (UN Doc.: *A/9655*).
6. On 20 August 1974, in a letter (UN Doc.: *A/9714*) from the Permanent Representative of Spain to the United Nations addressed to the Secretary General, Spain announced:
   - ***In keeping*** *with its support of the principle of self-determination proclaimed in resolutions 1514 (XV), of 14 December 1960, and 3162 (XXVIII), of 14 December 1973, and in other relevant resolutions of the United Nations General Assembly on the question of Spanish Sahara,*
   - *Having carried out the necessary consultations with representatives of the indigenous population of the Territory with a view to its self-determination;*
   - *Announces its decision to adopt the necessary measures to enable the indigenous population of the Sahara to exercise its right to self-determination;*
   - *It will hold a referendum, to be under the auspices of and supervised by the United Nations, during the first six months of 1975 on a date to be fixed sufficiently long in advance;*
   - *It will take the necessary measures to ensure that the indigenous inhabitants of the Territory exercise their right of self-determination in conformity with resolution 3162 (XXVIII), of 14 December 1973; and*
   - *It will, during the aforesaid period, establish the procedure for holding the referendum through appropriate consultations.*
7. On 13 December 1974, the General Assembly of the United Nations adopted Resolution 3292 (XXIX), which reads as follows:

   3. ***Urges*** *the administering Power* [Spain] *to postpone the referendum it contemplated holding in Western Sahara until the General Assembly decides on the policy to be followed in order to accelerate the decolonization process in the Territory, in accordance with resolution 1514 (XV), in the light of the advisory opinion to be given by the International Court of Justice;*
8. In the spring of 1975, the United Nations sent a Visiting Mission to the Territory. The Mission visited the entire Territory of Western Sahara from 12 to 19 May 1975, and visits all three neighboring countries: Mauritania, Argelia, and Marruecos. It also visits Spain. Paragraphs 12 and 13 of the report of the United Nations Visiting Mission, approved by the United Nations Special Committee during its session held on 7 November 1975 (UN Doc: *A/10023/Rev.1*) read as follows:

   12. As far as the referendum was concerned, the Spanish Government considered that ***the people of Spanish Sahara had unequivocally expressed*** *to the Mission* ***their desire for independence****. The Spanish Government considered that the United Nations should take note of that fact and enable it to complete the process of self-determination interrupted by resolution 3292 (XXIX).*

   13. The wish of the administering Power to decolonize the Territory is not doubted by the Mission.
9. As expressed in paragraph 312 of the Annex to the report of the United Nations Visiting Mission (*A/10023/Rev.1*), the conditions that Morocco demanded from Spain to accept the referendum foreseen by the Spanish Government were as follows:
   1. *Withdrawal of the Spanish troops and administration;*
   2. *Presence of the United Nations troops in the Territory;*
   3. *A United Nations administration in the Territory;*
   4. *A transitional period of six months after the departure of the Spanish troops and administration;*
   5. *Finally, the only referendum question to which the Moroccan Government could agree was the following:*

      "Do you want to remain under the authority of Spain or to rejoin Morocco?".

10. On 16 October 1975, the International Court of Justice, as the main judicial body of the United Nations and in response to a request presented by the General Assembly in the context of its role related to the decolonization of Western Sahara, issued an advisory opinion (Western Sahara, advisory opinion, I.C.J. Reports 1975, p. 12), including the following considerations declared in par. 162:

    The materials and information presented to the Court show the existence, at the time of Spanish colonization, of legal ties of allegiance between the Sultan of Morocco and some of the tribes living in the Territory of Western Sahara. They equally show the existence of rights, including some rights relating to the land, which constituted legal ties between the Mauritanian entity, as understood by the Court, and the Territory of Western Sahara. On the other hand, the Court's conclusion is that the materials and information presented to it do not establish any tie of territorial sovereignty between the Territory of Western Sahara and the Kingdom of Morocco or the Mauritanian entity. Thus the Court has not found legal ties of such a nature as might affect the application of General Assembly resolution 1514 (XV) in the decolonization of Western Sahara and, in particular, of the principle of self-determination through the free and genuine expression of the will of the peoples of the Territory.

11. On the same day, 16 October 1975, the Kingdom of Morocco announced the Green March as a strategy to invade Western Sahara.
12. On 6 November 1975, the Security Council of the United Nations adopted Resolution 380 (1975) on Western Sahara, which reads as follows:

    Deplores *the holding of the Green March,*

    Calls upon *Morocco immediately to withdraw from the Territory of Western Sahara all the participants in the March.*

13. At this point, it shall be noted that the General Assembly adopted a Resolution, on 13 December 1974, urging Spain to put the referendum on hold (see par. 7), and the following day, 14 December 1974, the General Assembly adopted Resolution, 3314 (XXIX), providing for the **Definition of Aggression**. Said Resolution reads as follows:

    Article 1.

    Aggression is the use of armed force by a State against the sovereignty, territorial integrity, or political Independence of another State, or in any other manner inconsistent with the Charter of the United Nations as set out in this Definition.

    Article 3 establishes the acts that shall qualify as an act of aggression, including:

    g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

    Article 5 establishes:

    1. *No consideration of whatever nature, whether political, economic, military or otherwise, may serve as a justification for aggression.*
    2. *A war of aggression is a crime against international peace. Aggression gives rise to international responsibility.*
    3. *No territorial acquisition or special advantage resulting from aggression is or shall be recognized as lawful.*

14. That is, after more than ten years, in which the United Nations had been calling for the implementation of the principle of self-determination, by holding a referendum allowing the Saharawi people to express their free and genuine will, a referendum which the administering Power had accepted and then began to prepare, at Morocco's request, the United Nations intervened to interrupt that process and request Spain to paralize the scheduled referendum until the advisory opinion of the International Court of Justice is known. And when the Court takes up an undoubted position in favor of the implementation of the principle of self-determination, and having adopted the resolution defining the act of aggression and concurring all the elements that define what is an aggression, the General Assembly neglects in an unacceptable way

its solemn obligations under the Charter, in relation to the Non-Self-Governing Territories, allowing such neglect, an aggression to a Non-Self-Governing Territory, to become a prolonged military occupation and an illegal territorial annexation through the use of force, to this day.

15. Although Spain had defended, before the International Court of Justice at The Hague, the absence of links of territorial sovereignty between Western Sahara and Morocco and was therefore contrary to the "Green March," since it was invading Spanish territory, the Spanish Government met with the representatives of Morocco and Mauritania and on 14 November 1975, the "Declaration of Principles between Spain, Morocco and Mauritania on Western Sahara," known as "Tripartite Accord of Madrid," which established the abandonment of the province by Spain "before 28 February 1976," was signed at Madrid, and established for the Territory a joint provisional government with Morocco and Mauritania, agreeing that it would enter into force "on the same day that the 'Law on the Decolonization of The Sahara' was published in the Official State Gazette (BOE)," which was published in BOE No. 278 of 20 November 1975.
16. The General Assembly of the United Nations did not consider the Tripartite Accord, allegedly unlawful for having taken place outside the United Nations, and allegedly illegitimate for having been reached without previous consultation with the Saharawi people. Thus, Resolution 3458 (XXX) from 10 December 1975 reaffirmed "*the responsibility of the administering Power [Spain] and of the United Nations with regard to the decolonization of the Territory and the guaranteeing of the free expression of the wishes of the people of Spanish Sahara*," reaffirming the validity of the advisory opinion of the International Court of Justice concerning Western Sahara, and requesting:

    "the Government of Spain, as the administering Power, in accordance with the observations and conclusions of the Visiting Mission and in accordance with the advisory opinion of the International Court of Justice, to take immediately all necessary measures, in consultation with all the parties concerned and interested, so that all Saharans originating in the Territory may exercise fully and freely, under United Nations supervision, their inalienable right to self-determination."
17. On 10 August 1979, the Islamic Republic of Mauritania reached a Peace Accord with the POLISARIO Front, by virtue of which the Republic of Mauritania renounced all territorial claims over Western Sahara.
18. The Kingdom of Morocco extends the occupation and invades and occupies the southern area of the territory previously occupied by Mauritania.
19. On 21 November 1979, the General Assembly of the United Nations adopted Resolution 34/37 (1979) on the Question of Western Sahara, which reads as follows:

    Reaffirms *the inalienable right of the people of Western Sahara to self-determination and Independence, in accordance with the Charter of the United Nations and the objectives of Resolution 1514 (XV).*

    Deeply deplores *the aggravation of the situation resulting from the continued occupation of Western Sahara by Morocco.*

    Urges *Morocco to join in the peace process and to terminate the occupation of the Territory in Western Sahara.*

    Recommends *to that end that the POLISARIO Front, the representative of the people of Western Sahara, should participate fully in any search for a just, lasting and definitive political solution of the question of Western Sahara, in accordance with the resolutions and declarations of the United Nations.*
20. Article 1 of the Charter of the United Nations, signed at San Francisco in the United States on 26 June 1945, declares:

    The ***purposes*** *of the United Nations are:*

2. To develop friendly relations among nations based on ***respect for the principle of equal rights and self-determination of peoples****, and to take other appropriate measures to strengthen universal peace.*

21. Thus, the right to self-determination is an *erga omnes* right and one of the basic principles of international law. Case concerning East Timor (Portugal v. Australia), Judgement, I.C.J. Reports 1995, p. 90, par. 29.
22. The principle of self-determination, as part of the norms of international law that govern the behavior of the specialized bodies, organizations and agencies of the United Nations, must be taken into consideration when addressing the situation of human rights in Western Sahara.
23. In accordance with said principle, as specified in Resolution 2625 (XXV) of the General Assembly of the United Nations (see par. 4 above), "*the territory of a colony or other Non-Self-Governing Territory has, under the Charter, a status separate and distinct*."
24. In view of the separate and distinct status recognized in the Territory of Western Sahara, under the principle of self-determination, in relation to that of any State, including the Kingdom of Morocco, the bodies established under human rights treaties cannot ignore said distinct and separate legal status when addressing or examining the situation of human rights in the Kingdom of Morocco in light of treaties of which the Kingdom is a State Party.
25. In its article 29, entitled "Territorial scope of treaties," the Vienna Convention on the law of treaties, signed at Vienna on 23 May 1969, establishes:

    Unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of ***its entire territory****.*
26. Additionally, in its article 34, entitled "General rule regarding third States," the Vienna Convention establishes:

    A treaty does not create either obligations or rights for a third State without its consent.
27. A treaty binds, as a rule, a State, to the geographical area in which that State exercises the fullness of its powers as recognized to sovereign entities by international law, to the exclusion of any other territory. Thus, under the principle of general international law of the relative effect of treaties, of which the rule in article 34 of the Vienna Convention constitutes a concrete expression, human rights treaties in which the Kingdom of Morocco is a State Party, bind the Kingdom of Morocco and cannot be applied in Western Sahara as if the Territory were an integral part of the Kingdom of Morocco but, on the contrary, its distinct and separate legal status must be scrupulously respected.
28. The International Court of Justice (see paragraph 10 above) underlined, in its advisory opinion on Western Sahara, that the population of this Territory enjoys, under general international law, the right to self-determination, it being understood that, for its part, the United Nations General Assembly in paragraph 7 of its resolution 34/37 on the question of Western Sahara (see paragraph 19 above), recommended that the POLISARIO Front, as the representative of the people of Western Sahara, should participate fully in any efforts to achieve a just, lasting and definitive political solution of the question of Western Sahara. Considering these facts, the people of Western Sahara should be considered a "third party" within the meaning of the principle of relative effect of treaties.
29. Paragraph 6 of the report of the Under-Secretary-General for Legal Affairs, the Legal Counsel of the United Nations, dated 29 January 2002 (S/2002/161), declares:

The Madrid Agreement did not transfer sovereignty over the Territory, nor did it confer upon any of the signatories the status of an administering Power, a status which Spain alone could not have unilaterally transferred. The transfer of administrative authority over the Territory to Morocco and Mauritania in 1975 ***did not affect the international status of Western Sahara as a Non-Self-Governing Territory****.*

30. In different resolutions adopted on the issue of the agenda entitled "*Activities of foreign economic and other interests which impede the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in Territories under colonial domination,*" the General Assembly reiterated:

    The exploitation and plundering of the marine and other natural resources of colonial and Non-Self-Governing Territories by foreign economic interests, in violation of the relevant resolutions of the United Nations, is a threat to the integrity and prosperity of those Territories. Any administering Power that deprives the colonial peoples of Non-Self-Governing Territories of the exercise of their legitimate rights over their natural resources… ***violates the solemn obligations*** *it has assumed under the Charter of the United Nations. (*Resolution 48/46, 10 December 1992, and Resolution 49/40, 9 December 1994*).*

31. The exploitation of uranium and other natural resources in Namibia by South Africa and different western multinational companies was declared unlawful in Decree No. 1 for the Protection of the Natural Resources of Namibia, enacted by the report of the United Nations Council for Namibia, and condemned by the General Assembly (Resolution 36/51, 24 November 1981, and Resolution 39/42, 5 December 1984).
32. The case of East Timor under the United Nations Transitional Administration in East Timor (UNTAET) is unusual because UNTAET was not an administering Power under Article 73 of the Charter, although East Timor remained on the list of Non-Self-Governing Territories. By the time UNTAET was created, in October 1999, the Treaty Relative to the Failure of Timor was fully operative, and Australia and Indonesia had awarded concessions in the area. To secure the continuity of the practical provisions of the Treaty Relative to the Failure of Timor, UNTAET, acting on behalf of East Timor, proceeded on 10 February 2000 with an exchange of letters with Australia to extend the validity of the Treaty. Two years later, in anticipation of independence, UNTAET negotiated with Australia, on behalf of East Timor, a draft "Timor Sea Arrangement" that would replace the Treaty Relative to the Failure of Timor at the time of independence. In concluding the agreement concerning the exploration and exploitation of oil and natural gas fields on the continental shelf of East Timor, UNTAET fully consulted on both occasions with the representatives of the people of East Timor, who participated actively in the negotiations.
33. If States or others (UNTAET) which have a recognized legal title to administer certain Territories cannot deprive the peoples of those Territories of their legitimate right to their natural resources, at the risk of otherwise deemed in *failure to comply with their solemn obligations under the Charter*, what can be said of those other States which lack any legal title to administer the Territories over which they seek to extend their sovereignty?

A. Stances taken by the Government of Morocco

34. Before deciding to launch a war against Western Sahara, committing a crime of aggression, genocide and a crime against humanity, the public and solemn positions adopted by the Kingdom of Morocco were fully in accordance with the Purposes and

Principles of the Charter of the United Nations. To name but a few, we present the following in chronological order:

1. *Day Ould Sidi Baba, representative of the Kingdom of Morocco at the meeting of the Committee of the 24 (Addis Ababa, 7 June 1966):*
   "I ask for the independence of Western Sahara as soon as possible and this should be an authentic independence, hence we can get over the actual impasse. Once in charge of their destiny, the inhabitants of the region will be free to fulfill their duties as dignified and conscientious citizens and will act in favor of a policy that suits their people's national objectives."
2. *Mohamed Charkhawi, then Minister of Foreign Affairs of Morocco, said at the 21st session of the General Assembly of the United Nations, held on 13 October 1966:*
   "Morocco supports a real Independence for Western Sahara, putting the future of the region in the hands of its people which, in the context of liberty will decide freely on their self-determination. I therefore call for the organization of a process of self-determination according to the following stages: Spanish military forces withdrawal from the Territory and deployment of the United Nations forces (…) withdrawal of the Spanish administration and return of the Saharawi refugees abroad. These are the conditions that the United Nations could be responsible for, with the support of the Moroccan and Spanish authorities."
3. *King Hassan II himself, in a press conference held on 30 July 1970 and as published by Yearbook of North Africa, 1970, CNRS, Paris, 1971, p. 807, stated:*
   "Instead of going on claiming the territory of the Sahara, I would make the specific request that a popular consultation takes place, assuring that the first result being the departure of the non-Africans and allowing the people of the Sahara to choose between life under the Moroccan aegis, under their own aegis, or under any other aegis."
4. *Mr. Butaleb, representative of Morocco at the 25th session of the General Assembly (12 October 1970).*
   "Morocco and neighboring countries, concerned about peace in the area, the development and cooperation among them, have decided to implement and facilitate the application of the self-determination of the territory of Western Sahara in collaboration with the international community and the administering Power."
5. *Mr. Benhima, during the 28th session of the General Assembly of the United States (3 October 1973), declared, on behalf of the Government of Morocco:*
   "It is known that my country proclaims solemnly and before other international authorities to be in favor of the self-determination of the people in this Territory, towards the decolonization of Western Sahara."
6. *Joint tripartite communications issues on 14 September 1970 at Nouadhibou (Mauritania) and on 24 July 1973 at Agadir (Morocco). The Heads of State of Argelia, Mauritania and Morocco declared at Nouadhibou and Agadir:*
   "The unshakable attachment to the principle of self-determination and their concern that said principle is implemented within a framework that ensures the free and genuine expression of the inhabitants of Western Sahara, in accordance with the decisions of the United Nations regarding this question."
7. *Morocco, during the meeting of the Council of Ministers of the Organization of African Unity (OAU), held at Rabat, actively worked towards the adoption of the Resolution of the Council of Ministers number 15, CM-RES. 272, 1972, requesting Spain, administering Power of Western Sahara to:*
   "Foster a free and democratic setting where the people of this Territory may exercise their right to self-determination and independence without undue delay and in accordance with the Charter of the United Nations."
8. *King Hassan II, during his address to the 38th session of the General Assembly of the United Nations, held on 27 September 1983, declared:*
   "Morocco says that it wants that referendum, Morocco tells you that it is ready for the referendum to take place— tomorrow, if you wish it. Morocco is ready to grant all facilities to any observers from wherever they may come so that there may be a cease-fire and a just,

equitable and true consultation. And, finally, Morocco solemnly undertakes to consider itself bound by the results of that referendum."

B. The praxis of States

35. No State recognizes the sovereignty of Morocco on Western Sahara.
36. The Free Trade Agreement between the United States of America and the Kingdom of Morocco excludes Western Sahara from the scope of the Agreement.
37. The Trade Agreement between the European Association of Free Trade Zones (Iceland, Liechtenstein, Norway, and Switzerland) and the Kingdom of Morocco also excludes Western Sahara from the scope of the Agreement.

C. The praxis of the agencies of the United Nations

38. United Nations agencies, such as WHO, UNDP, etc., operating within the Kingdom of Morocco, under bilateral agreements between these Agencies and the Kingdom, never cross, in the exercise of their activities, the 27º40' parallel, the internationally recognized border between the Kingdom of Morocco and Western Sahara. We cite the following two examples, but the practice is common to all United Nations agencies.
39. Agreement concerning assistance by the United Nations Development Programme to the Government of Morocco (with the exchange of letters), signed at Rabat on 13 May 1982. According to this Agreement, UNDP does not operate in the Territory of Western Sahara.
40. Standard Basic Cooperation Agreement of the United Nations Industrial Development Organization (UNIDO) signed at Vienna on 6 September 1988 between UNIDO and the Kingdom of Morocco. According to this Agreement, UNIDO does not operate in Western Sahara.

D. The case-law of international courts

41. The Judgement of the General Court of the European Union, dated 10 December 2015 (T-512/12), annuls the European Union Council Decision to include Western Sahara in the scope of a Trade Agreement between the European Union and the Kingdom of Morocco.
42. In May 2017, the High Court of South Africa, Local Division of Eastern Cape, Port Elizabeth, ordered the detention of a private New Zealand vessel carrying phosphate rock from Laayoune (Western Sahara) that a Moroccan company had sold to a company of fertilizers in New Zealand. The Hight Court had ordered the detention of the cargo due to a lawsuit filed by the Saharawi Arab Democratic Republic and the POLISARIO Front, claiming ownership of the phosphate cargo, against the transport company, the Moroccan seller company and the New Zealand buyer company. The vessel was carrying a cargo of 50,000 tons of phosphates, with an approximate market value of about 15 million US dollars.
43. In its Judgement dated 23 February 2018, the Hight Court of South Africa, ruled that ownership of the cargo had not been legally conferred on the seller and that the seller did not have the right to sell it to the buyer. That is, it recognized the perpetual ownership of the Saharawi people over their natural resources.

E. The case-law of Spanish courts

44. Another relevant aspect of this issue lies in the relationship that binds the Territory to the administering Power. The Order dated 9 April 2015 (summary 1/2015), of the Central Court of Instruction No. 5 of the Audiencia Nacional de España (a Division of the Supreme Court in Spain), a court whose territorial jurisdiction covers the entire Spanish national territory, declares several Moroccan commanders to be prosecuted for the crime of genocide, in concurrence with 50 crimes of murder, 76 crimes of attempted murder, 208 crimes of illegal detention, one crime against sexual freedom and 23 crimes of injury and torture. The Audiencia Nacional issued a search, arrest, and prison warrant, and issued international arrest warrants for their extradition to Spain.
45. The Criminal Chamber of the Audiencia Nacional de España, in Order No. 40/2014, dated 4 July 2015, assumes the position that *Spain continues to be the de jure administering Power of Western Sahara, and as such, has the obligations set forth in Articles 73 and 74 of the Charter of the United Nations, among them, to provide protection, including jurisdictional protection, to its citizens against any abuse, for which it must extend its territorial jurisdiction to cover the facts on which the current criminal proceedings are based. Consequently, the Chamber agrees that the investigating court has jurisdiction to hear the facts that are the subject of the complaint, in accordance with the territoriality criterion set out in Article 23.1 of the Organic Law on the Judiciary, and not the universal jurisdiction criterion set out in Article 23.4 of the aforementioned law, which means that it is not affected by the recent amendment of that article. The incumbent Magistrate of said Court is Mr. Grandes Marlaska, current Minister of the Interior of Spain.*
46. Along the same lines, the Public Prosecutor's Office *considers that in this case, the competence of the Spanish Jurisdiction must be declared by the principle of Territoriality, included in Article 8 of the Civil Code and Article 23 of the Organic Law of the Judiciary, which provide that the criminal laws, the police laws and the public security laws are relevant to all crimes committed in Spanish territory, or committed on board Spanish ships or aircraft, without prejudice to the provisions of the international treaties to which Spain is a party*.
47. Interestingly, during the same months of 2015 that the CESCR and the CCPR Committees were examining, respectively, the fourth and sixth reports submitted by the Kingdom of Morocco, a court of national scope of a third State, Spain, decreed that the Territory included in both reports is covered by the territorial jurisdiction of the Spanish courts, by application of Spanish national legislation. In other words, both Committees sought to examine, somehow, the degree of enjoyment of human rights guaranteed by the national legislation of a State Party within a territory that the courts of a third country were claiming for themselves. Meanwhile, the people at the center of this squared circle, made up of two States and two Committees, were still unable to express their free and genuine will. A great paradox that turns the whole international legal scaffolding upside down and exposes, in the eyes of any reasonable neutral observer, that members of the treaty bodies must take into account the "**sacred trust**" contained in Chapter XI of the Charter of the United Nations when dealing with issues related to Non-Self-Governing Territories, at the risk of seriously violating

the Addis Ababa Guidelines *(A/67/222)*, adopted to guarantee their independence and impartiality.

48. We insist. The implementation in Western Sahara of human rights treaties by treaty bodies under agreements with the Kingdom of Morocco must be carried out in strict respect of the distinct and separate legal status of the Territory.
49. From the paragraphs cited above, we can conclude that the cardinal position, under general international law, reflected in Resolution 2625 (XXV), because of the *erga omnes* obligations it generates, in relation to the distinct and separate legal status of the Territory, together with the obligations contained in Chapter XI of the Charter of the United Nations, in addition to the obligations of Article 1 common to the four Geneva Conventions of August 1949, and the 1975 Advisory Opinion of the International Court of Justice at The Hague, constitute a sufficient set of arguments not to accept the admission and examination of any reports submitted by the Kingdom of Morocco to treaty bodies that include the Territory of Western Sahara.
50. International human rights law is fully applicable to the Occupied Territory of Western Sahara, but it is so in accordance with the international legal status of the Territory. In other words, the human rights treaty bodies, in their task of ensuring the promotion and protection of human rights, at the universal level, cannot ignore the distinct and separate legal status of the Territory. And they should require the State Party to implement the relevant treaty in Western Sahara, not as a sovereign State in the Territory, but as an occupying Power. Accordingly, they should refrain from examining any report that addresses the human rights situation in Western Sahara as part of the national human rights situation in the Kingdom of Morocco.
51. It is an illusion to think that the inhabitants of a Non-Self-Governing Territory, who are still denied the right to freely determine their political status, can enjoy civil, political, social, economic, cultural or any other rights provided for in international human rights instruments. After all, Resolution 1514 (XV) of the General Assembly, in its first article within the provisions section, states that:

    1. The subjection of peoples to alien subjugation, domination and exploitation ***constitutes a denial of fundamental human rights****, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation.*

F. International Humanitarian Law

52. To seek the promotion and protection of human rights in Western Sahara, without taking into account its legal status and without taking into account the legal position of Morocco in the Territory, would be like trying to give some semblance of normality to the current situation of occupation, which would be tantamount to saying that we are not facing "*a subjection of peoples to foreign subjugation and exploitation*," and the latter implies expelling Western Sahara from the scope of Resolution 1514 of the General Assembly.
53. This is so because Article 7 of the Vienna Declaration and Programme of Action establishes that "*the processes of promoting and protecting human rights should be conducted in conformity with the purposes and principles of the Charter of the United Nations, and international law.*"
54. The logical consequence of this procedure by the treaty bodies, which consists in accepting and examining the reports submitted by the Kingdom of Morocco, which

cover the Moroccan territory and also the Saharawi territory, is that they seek to examine whether Morocco guarantees the rights set forth in the Covenant to the Saharawi people, when Morocco does not even recognize them as such. There is no point in pretending that a given State Party respects the rights of a given people when that State Party does not even recognize the people as a distinct and different entity.

55. In accordance with the principle of illegality of any territorial acquisition resulting from the threat or use of force, all acts that the Kingdom of Morocco carries out in the Territory, without recognizing its status as an occupying Power, through the effective implementation of international humanitarian law, are unlawful. And in these cases, given the magnitude of the violation, the international community, and not only the directly injured entity, must claim responsibility for the infraction.
56. And this is how the international community has reacted in the case of the Crimean Peninsula. The following is a brief excerpt from the Report of the OHCHR Mission to the Crimean Peninsula:

> *Office of the United Nations High Commissioner for Human Rights*
> *Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine 13 September 2017 to 30 June 2018*
> *OHCHR findings confirm the continuing failure of the Russian Federation authorities, as the occupying Power, to adequately guarantee and protect a wide range of human rights in Crimea. The Russian Federation continued applying its legislation in Crimea, which included holding Russian Federation presidential elections in Crimea on 18 March 2018, contrary to the international humanitarian law obligation to respect the laws of the occupied territory.*
> *Conclusions and recommendations*
> *86. During the 10 months covered by this report, Crimean residents continued to be subjected to the legal and governance framework of the Russian Federation, in violation of international humanitarian law. Against this background, the overall human rights situation in Crimea continued to be marked by restrictions in the exercise of fundamental freedoms and a lack of effective remedies to claim rights and seek justice.*
> *87. In order to improve the human rights situation in Crimea, OHCHR recommends:*
> *88. To the Government of the Russian Federation:*
> *a) Uphold human rights in Crimea and* ***respect obligations that apply to an occupying Power pursuant to international humanitarian law provisions****;*
> *90. To the international community:*
> *a)* ***Urge*** *the Russian Federation* ***to comply with its obligations as an occupying Power under international human rights and humanitarian law****;*

57. According to Article 42 of The Hague Regulations of 1907, concerning the laws and customs of war on land, the Kingdom of Morocco is the occupying Power in Western Sahara. This has been stated by General Assembly resolutions A/RES/34/37 of 1979 and A/RES/35/19 of 1980, as well as by the Advocate General of the Court of Justice of the European Union, Mr. Melchior Wathelet, in his opinion delivered on 10 January 2018, on Case C-266/16, Western Sahara Campaign UK, The Queen v Commissioners for Her Majesty's Revenue and Customs, Secretary of State for Environment, Food and Rural Affairs.
58. However, in the case of Western Sahara, the treaty bodies have not paid due attention to the situation of occupation and, given the absence of pronouncements similar to those adopted by the OHCHR Mission to the Crimea, one might even say that they have almost blessed its annexation by the Kingdom of Morocco.
59. Exactly the same legal logic invoked by the International Court of Justice, in its Advisory Opinion of 9 July 2004, and reiterated by the same treaty body committees, to claim the applicability of international human rights law alongside international

humanitarian law in other occupied territories, The same legal logic is applicable to the Kingdom of Morocco, to demand respect for its obligations under international humanitarian law, to ensure that the legal status of the Territory is not changed, and then to demand the application of the same international human rights law, in its capacity as an occupying Power and not as a sovereign state.

60. Why do the treaty bodies not require the Kingdom of Morocco to implement international humanitarian law in Western Sahara, especially when the first obligation under the Geneva Conventions is that "***The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances***"?
61. The treaty bodies, as enforcers of an essential part of the international legal order, must ensure that they '*respect and ensure respect*' for the provisions of the Convention. This has been their practice in the case of other occupied territories. See paragraph 9 of the Concluding Observations to the Fourth Periodic Report of Israel, E/C.12/ISR/CO/4 and paragraph 31 of the List of Issues to the Fourth Periodic Report of Israel, E/C.12/ISR/Q/4.
62. When the treaty bodies require a given State to respect and apply international humanitarian law in certain occupied territories, they do so on the basis of compliance with international law. But when they fail to make the same demands of another State, what are the grounds for such failure? Moreover, it should be noted that Morocco is a party to the Geneva Conventions of 1949 and has acceded to Additional Protocol I of 1977 on 3 June 2011.
63. In addition, the Depositary State of the Geneva Conventions of 1949 accepted and notified to all High Contracting Parties to the Geneva Conventions of 1949, the Declaration of the POLISARIO Front of 23 June 2015, on its accession to the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977. Thus, the POLISARIO Front, as the authority representing the people of Western Sahara who are fighting for their right to self-determination, declares that it commits itself to apply the Geneva Conventions of 1949 and Protocol I in the conflict between the POLISARIO Front and the Kingdom of Morocco.
64. The receipt and examination of the reports submitted by the Kingdom of Morocco, where Western Sahara appears as an integral part of the Kingdom, and the claim to examine the implementation or the degree of enjoyment of the rights enshrined in the respective treaty, violates the obligation of these bodies to respect the right of the Saharawi people to self-determination, which they are called upon to defend, as well as would constitute a violation of their obligation not to recognize an unlawful situation resulting from a violation of this right and not to render aid or assistance in maintaining the situation.
65. "An internationally wrongful act constituting an international crime entails for others the obligation to:
    a. Not recognize the legality of the situation arising from this act;
    b. Not to render aid or assistance to the author State in maintaining the situation arising from this act."
66. The principle has been established in international law that "*the domestic law of a State may not be invoked to prevent an act of that State from being characterized as wrongful under international law*." However, some treaty bodies, in some parts of their interaction with Morocco, have violated this principle.

67. As Spain unilaterally renounces its responsibilities as the administering Power of the territory, the obligations contained in Chapter XI of the Charter of the United Nations do not disappear. Thus, the '***sacred trust***' established in the Charter of the United States remains under the protection of the entire international legal system, of which the treaty bodies are prominent representatives.
68. Article 73(e) of the Charter binds the administering Powers to transmit information on the situation in the Non-Self-Governing Territories. However, the Kingdom of Morocco is not the administering Power in the case of Western Sahara. The essential core of the obligations of the administering Powers was and remains, in accordance with Resolution 1514, to ensure the access of these peoples to independence. In the case of Western Sahara, as the administering Power has relinquished its responsibilities, the custodian of this essential core of the obligations of the administering Powers is the General Assembly of the United Nations.
69. However, as a '**sacred trust**,' in the words of the Charter of the United Nations itself, the essential core of these obligations must be respected by all. In this sense, the human rights treaty bodies are called upon to uphold, above all else, this '**sacred trust**,' thus establishing the principle that '*the interests of the inhabitants of these territories are paramount*.'
70. Moreover, '*the just treatment of these peoples and their protection against any abuse*' required by the Charter of the United Nations is clearly projected on the activity of the treaty bodies, inviting them to claim, before the Kingdom of Morocco, the respect of its obligations under international humanitarian law, in order to safeguard the distinct and separate legal nature of the Territory.
71. It should be noted at this point that the drafters of the Charter of the United Nations themselves had to resort to a meta-legal concept to describe certain obligations. Without a doubt, the enormous moral burden on which the defense of the rights and interests of colonial peoples rests led the drafters of the Charter to '*sacralize*' the legal right protected by those obligations, which is none other than the supreme interest of the inhabitants of those territories.
72. The responsibility for compliance with Chapter XI of the Charter in Western Sahara lies with the United Nations. This organization, its member states and subordinate organizations, agencies or bodies have a duty to protect the rights and legitimate interests of the Saharawi people. However, the treaty bodies, with respect to human rights, instead of fulfilling their obligations, have '*delegated*' them to an occupying Power that not only does not recognize the people as such, but in the entire articles of its Constitution, there is not a single article that contains the word 'people.'
73. As a Non-Self-Governing Territory, its treatment must be at least analogous to that of other Non-Self-Governing Territories. And when the Committee on Civil and Political Rights, CCPR, notes that, for example, the United States of America allocates a budget line for the promotion of the right to self-determination in other Territories, (see II and III, US report of 2005. *CCPR/C/USA/3*), it should remember the situation of the people of Western Sahara.
74. In relation to other Non-Self-Governing Territories, let us look, for example, at the 2008 French Constitution, the preamble of which states:

> "*By virtue of these principles and that of the self-determination of peoples, the Republic offers to the overseas territories which have expressed the will to adhere to them new institutions founded on the common ideal of liberty, equality and fraternity and conceived for the purpose of their democratic development.*"

75. Or the Portuguese Constitution, revised in 1989 and valid in 1997, when the current United Nations Secretary-General António Guterres, then Prime Minister, was the addressee of the obligation contained in the second paragraph of:

> *ARTICLE 293.*
> *(Self-determination and Independence of East Timor)*
> *1. Portugal shall remain bound by her responsibilities under international law to promote and safeguard the right to self-determination and independence of East Timor.*
> *2. The President of the Republic and the Government shall have the Powers to perform all acts necessary for achieving the aims set forth in the preceding paragraph.*

G. Specific examples related to specific rights

76. Consider the following example. The right to a nationality, as enshrined in the Universal Declaration of Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Nationality of Married Women, the Convention on the Rights of Persons with Disabilities and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The issue of nationality is further regulated by the Convention on the Reduction of Statelessness, the Convention relating to the Status of Stateless Persons and the Convention relating to the Status of Refugees.
77. International humanitarian law, especially the Fourth Geneva Convention and its Additional Protocol I, addresses the protection of persons by virtue of their nationality. And, of course, international humanitarian law, by depriving the occupying Power of the ability to exercise State authority in the occupied territory, is depriving it of the possibility of imposing its nationality on the inhabitants of that occupied territory.
78. If we take into account that for international law, the right of States to establish who their nationals are is not an absolute prerogative of States, we could ask ourselves what is the impact of an "imposed nationality" on the dignity of the human person. Human dignity, understood as a legally protected right on which all other rights are based, understood as the origin of all human rights. Or, in other words, what impact does the imposition of a certain nationality have on human dignity? And, even more, what impact does this imposition have on the dignity of the people to whom this nationality has been imposed? In the end, it is difficult to separate the dignity of a person from the dignity of the people to which they belong.
79. Consider another example. Since time immemorial, a specific customary system has been used in Western Sahara to name and give surnames to people. The Spanish colonization secularized that customary law and the State's civil registries turned that customary law into the substantive law for the registration of persons.
80. When Morocco invaded the Territory in 1975, it forcibly imposed its national law on the newly conquered territories and changed the surnames of all the inhabitants of the Territory. When, in 1979, it invaded the part under the control of Mauritania, it extended this imposition to the southern half of the Territory. On the other hand, the population that managed to flee that invasion and is now beyond the Moroccan walls, retains its original names and surnames. Thus, the Saharawi people may be the only people in the world where siblings with double bonds have different surnames depending on whether they are on one side or the other of the wall; it is the only people where a part of the population has different surnames from those recorded in the

United Nations census; it is the only people where a part of the population has different surnames from those recorded in the archives of the administering Power. Thus, the population living in the areas occupied by Morocco, must live with imposed surnames, alien to their culture and tradition and different from those carried by other family members living beyond the Moroccan military walls. And it is only after they are dead that their relatives write, on their tombstones, their real names. That is, while they live, they do so with their usurped legal personality, and they can only recover that personality they used before the invasion, once they are dead.

81. And when, in a Non-Self-Governing Territory, cemeteries and not human rights treaties become the true guardians and holders of the right to legal personality and the right to a name, as enshrined in Articles 16 and 24(2) of the ICCPR and Article 7(1) of the Convention on the Rights of the Child, the foundations of the morality of the international community must be shaken.
82. Consider another instance that falls squarely within the rights enshrined in the International Covenant on Economic, Social and Cultural Rights and on which the obligation of States to "Take steps" is projected, the implementation of which is examined by the CESCR Committee. In a school in Laayoune, in the occupied part of Western Sahara, children are taught that November 6 of each year is a National Holiday (of the Kingdom of Morocco) because it is the day of the Green March. On the other hand, in another school, located east of the wall, but within the same territory, the children are taught that November 6 is the day that an event occurred that the International Community has described as ***deplorable***, because it is the day of the Green March, the day of the invasion of Western Sahara. And when children of the same people are taught such different and conflicting things, we should conclude that something is wrong in the commendable work of ensuring respect for human rights and, moreover, the due diligence of the members of the treaty bodies should invite them to re-examine the way in which the issue of human rights is addressed in that Territory.

> *Decree number 2-77-169 on 9 rabiä I 1397 (28 February 1977) to establish national holidays to by public administrations, public establishments and licensed services (published in the Official Gazette, 66th year, number 3358, on 18 rabiä I 1397 (9 March 1977).*
>
> > *Article 1.- The following holidays will be observed with paid time off from work in public administrations, public establishments, and licensed services:*
> > *- Accession to the Throne (3 March)*
> > *- Labor Day (1 May)*
> > ***- Al Massiratu Al Khadra (6 November)***

83. The Green March is nothing more than a clear manifestation of the acquisition of territory through the threat and use of force, which is why the international community has ***deplored*** it, through a resolution of the Security Council of the United Nations, on the same day of the events, 6 November 1975.
84. However, a given State has made it a National Holiday and imposes the teachings and praise of that international crime on the children of the people who are victims of that international crime, as defined by the International Commission of Jurists. In other words, the glorification of barbarism by its perpetrators is imposed on its victims. Thus, an internationally illicit act is made a National Holiday by the national law of a particular State and such a holiday is imposed on the people who are victims of the illegality. The Committee's silence on this issue may give rise to various opinions, but it will be exceedingly difficult not to see an endorsement of the lawfulness of an internationally wrongful act under domestic law.

85. Video of a news item from the Moroccan public television news, '2M', about the Green March in education. It is also not by chance that the TV channel, to elaborate the news, has chosen the occupied city of Laayoune: https://www.youtube.com/watch?v=GirYb8BOBLA&feature=youtu.be
86. What impact, then, does the imposition of such education have on Article 13(1) of the ICESCR, which states: "*The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity*"? What respect for the human personality or the sense of dignity of persons is there in invading, annexing and occupying the territory of a people and, moreover, forcing them to celebrate such annexation?

PART TWO: SOME TREATY BODIES FACING WESTERN SAHARA

87. And, taking advantage of the fact that, from 2010 to 2020, the international community is celebrating, with little enthusiasm, the Third International Decade for the Eradication of Colonialism, agreed by General Assembly resolution (A/RES/65/119) of 10 December 2010, it is worth asking the following question: **What impact do the actions of the human rights treaty bodies have on the Non-Self-Governing Territories?** The question is even more valid if we consider that resolution 1514 (XV), the so-called '*Bible of Nations*,' establishes that colonialism and occupation ***constitute a denial of fundamental human rights***. As will be seen at the end, the action of these treaty bodies could be working in precisely the opposite direction to that desired.
88. In relation to the question posed, and without entering into the assessment of whether or not the human rights treaty bodies fall into the category of '*other organizations of the United Nations system*,' it should be noted that the resolution (A/RES/65/119), in addition to quoting the ICCPR in its considerations, provides in its Fourth Ordinal:
    1. *Invites Member States, the specialized agencies and other organizations of the United Nations system […] actively to support and participate in the implementation of the plan of action during the Third International Decade.*
89. To answer the question posed, we will first have to see to what extent the treaty bodies, in addressing the issue of the enjoyment of human rights in this territory, have or have not taken into account its status as a Non-Self-Governing Territory. And to that end, we will briefly review the interaction of human rights treaty bodies with Western Sahara.
90. The oldest of these, the Committee on the Elimination of Racial Discrimination (CERD), interacts with Western Sahara through two channels, one under Article 15 of its own founding treaty, which links it directly to Non-Self-Governing Territories at all its sessions, and the other, through the examination of reports submitted by States Parties to the Convention, when considering their position on the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, as it does when it asks many States during the examination of their report.
91. Under Article 15 of its founding treaty, the CERD adopted various Decisions on Western Sahara. For example, in 1972, it adopted a Decision (*UN Doc. A/8718, page 44*), which states:

D. SPANISH SAHARA

The Committee on the Elimination of Racial Discrimination,

Having noted General Assembly resolution 2711 (XXV) of 14 December 1970,

Recommends to the Special Committee to invite the administering Power to supply further information on the progress which has been achieved in the preparation of the people of Spanish Sahara for self-determination as an essential element in the elimination of racial discrimination.

92. The following year, 1973, at its seventh session, the CERD adopted a Decision on the Spanish Sahara (*UN Doc. A/9018. Chapter VII.I.C*), page 83):

C. SPANISH SAHARA

1. The Committee, while taking into account General Assembly resolution 2983 (XXVII), in which the Assembly deplored the fact that the administering Power has not provided sufficiently clear information on the conditions and time-table it intended to apply, wishes to recall its own recommendation adopted at the sixth session. 32/

2. Accordingly, the Committee recommends to the Special Committee to request the Government of Spain, a Party to the International Convention on the Elimination of All Forms of Racial Discrimination, to provide it with information on the progress which has been achieved in the preparation of the people of Spanish Sahara for self-determination which, in the opinion of the Committee, is an essential element in the elimination of racial discrimination.

93. At that session, when examining the report submitted by Spain, the administering Power, the Committee on the Elimination of Racial Discrimination (CERD) noted that no information was provided with regard to the matters covered by the Convention concerning the situation in the State Party's dependent territories (paragraph 265, *in fine*). In response, the representative of Spain said that, in accordance with Article 73(e) of the Charter, Spain transmits annually to the United Nation information on the only Territory under Spain's control, namely, the Spanish Sahara.
94. During 1974 and 1975, the CERD maintained the same line in relation to Western Sahara, claiming the right of the Saharawi people to self-determination and requesting, from the administering Power, Spain, additional information about the Territory. The CERD also heard the intervention of a representative of the POLISARIO Front in August 1975.
95. But the key year of the interaction of the CERD with Western Sahara was to be 1976, when it held two sessions (13th and 14th).
96. Five months before the beginning of the 13th session of the CERD, the International Court of Justice had issued its Advisory Opinion on Western Sahara on 16 October 1975. Four months before the CERD began its 13th session, the United Nations Security Council adopted resolution 380 (1975), ***deploring*** the Green March and ***urging*** the Kingdom of Morocco ***to withdraw immediately all participants in the March***. More than four months before the beginning of the 13th session of the CERD, the General Assembly had adopted the Report of the United Nations Visiting Mission to Western Sahara. One month before the beginning of the 13th session of the CERD, the Spanish representative to the United Nations announced that Spain was abandoning all responsibility in the territory. And already at the beginning of this same 13th session, Morocco and Mauritania had announced the Agreement reached in Rabat on 14 April 1976, by virtue of which they agreed to divide the territory,

integrating the northern part with the Moroccan national territory and the southern part with the Mauritanian national territory.

97. In the light of the foregoing, when the CERD opened its 13th session and considered the Fourth Report of Spain on 12 April 1976, there was no mention of Western Sahara, as stated in the Committee's Concluding Observations on the Fourth Report of Spain (*UN Doc. A/31/18). Paragraphs 136-143*).
98. Similarly, under the summary of the 1976 annual report of the CERD, concerning the *examination of petitions and reports and other information relating to Trust and Non-Self-Governing Territories and any other Territories to which resolution 1514 (XV) applies*, the CERD also does not adopt a Decision or Recommendation or Observation on Western Sahara.
99. Why? What happened? Why this silence of the CERD on a Non-Autonomous Territory? Let us recall that four years earlier, in its Decision on Western Sahara adopted on 25 August 1972, The CERD considered that in that Territory "***self-determination is an essential element in the elimination of racial discrimination***."
100. The CERD, moreover, at its first session in January 1970, had adopted the **Declaration on the Responsibility of the Committee under Article 15 of the Convention**, (Annex IV.A.2 in UN Doc. *A/8027*) in which it states:

    Territories to which Article 15 of the Convention applies:

    "The Committee holds that Article 15 authorizes it to examine all information received from the United Nations referred to in paragraphs 2 and 4 of Article 15 concerning matters dealt with in the Convention, in ***all Trust and Non-Self-Governing Territories and in any other Territories to which resolution 1514 (XV) applies, whether or not they are the administering Powers of those Territories parties to the Convention****."*
101. In fact, since 1971, the CERD had adopted countless honorable decisions in relation to each Portuguese colony in Africa, when Portugal had not acceded to the Convention until 22 August 1982, after the independence of most of these colonies.
102. Are not the same grounds on which it based its decision to receive information on the Non-Self-Governing Territories, even if the Power concerned was not a State Party to the Convention, now evocative of a Non-Self-Governing Territory whose Power has abandoned its responsibilities to the Territory in open violation of international law?
103. In any case, Article 15, paragraph 5, of the Convention itself left open an alternative channel of information, allowing the CERD to keep up to date on the situation in all Non-Self-Governing Territories. Said paragraph states:

    4. The Committee shall request from the Secretary-General of the United Nations all available information relevant to the purpose of the present Convention and concerning the territories referred to in paragraph 2(a) of this article.
104. Similarly, in paragraph 3 of the above-mentioned Statement of Accountability (Annex IV.A.2 in UN Doc. *A/8027*), the CERD states that it may consider:

    C) Any relevant information pertaining to the objectives of the Convention and concerning the territories referred to in Article 15, paragraph 2(a), of the Convention, which is available to the UN Secretary-General and has been requested by the Committee.
105. At the end of 1975, on three separate occasions, the United Nations Secretary-General submitted three reports on the question of Western Sahara, pursuant to resolutions adopted by the Security Council on 22 October 1975, 2 November 1975, and 06 November 1975. But even with all the information available to the Committee, and no doubt that the reports prepared by the United Nations Secretary-General were thorough and highly valuable, the CERD chose to remain silent. It seems as if the partition of the lands of a Non-Self-Governing Territory by means of a straight line,

its invasion by the armies of two neighboring States and the ravages of war, constitute a guarantee of respect for the rights enshrined in the Convention.

106. What was the history of similar cases that the CERD had faced at that time? For example:

107. In 1971, at its third session, the CERD considered the Supplementary Report submitted by the Syrian Arab Republic and adopted the following decision (Doc. *A/8418*, paragraph 83):

> 83. The text of the Committee's decision reads as follows (see also chap. VII, sect. B, decision 4 (iv)):
>
> 1. The Committee on the Elimination of Racial Discrimination takes note of the information, contained in the supplementary report submitted by the Government of the Syrian Arab Republic at the Committee's request, to the effect that racial discrimination is being practised in that part of Syrian national territory which is known as the Golan Heights and which is under Israeli occupation.
>
> 2. The Committee takes note also of the resolutions adopted by competent organs of the United Nations, and of the reports of the Committees set up by the General Assembly and by the Commission on Human Rights to investigate the situation, to which the report submitted by the Syrian Government makes reference.
>
> 3. The Committee wishes to draw the attention of the General Assembly to this situation.

108. Similarly, the CERD, at the same session, adopted another Decision, concerning the Panama Canal (Doc. *A/8418*, Chapter VII, Section B, Decision iv):

> 3 (IV). Information supplied by Panama relating to the situation in the Panama Canal Zone 16/
>
> 1. The Committee on the Elimination of Racial Discrimination takes note of the information formally furnished by the Government of Panama to the effect that in part of its national territory known as the Panama Canal Zone, which is under the control of the Government of the United States of America, certain forms of racial discrimination have been and are being systematically practised.
>
> 2. The Committee did not have the competence to request the relevant information on this question from the Government of the United States of America, since the United States of America is not a Party to the Convention.
>
> 3. However, the Committee wishes to draw the attention of the General Assembly to this situation.

109. In other words, two States that are party to the Convention have complained to the CERD that certain rights protected by the Convention are being violated in certain areas of their national territory that are under the occupation or control of third States that are not party to the Convention. In both cases, the Committee assumes its responsibility, reacts, takes note, and brings the matter to the attention of the General Assembly. That is, it reports the matter to the General Assembly.

110. However, when identical or similar events later occur in a Non-Self-Governing Territory, abandoned by the administering Power, the CERD deprives itself of recording, for posterity, a work worthy of enduring in the annals of history.

111. In the case of the Golan Heights, the accused State was not a State Party to the Convention, but its Representative to the United Nations requested the right to petition the Committee to appear before it. The CERD objected to this request, arguing that the petitioning State was not a party to the Convention and could not therefore be given the same rights as those enjoyed by States Parties under Article 9, paragraph 2, of the Convention.

112. As concerned with the rights enjoyed by States Parties under Article 9(2) of the Convention, the CERD should also have shown itself to be concerned with the "**sacred trust**" under the Charter in relation to Non-Self-Governing Territories, seeking to treat such Territories in a manner that does not tend to discrimination.

113. The following year, on 15 August 1977, in its 16th, the CERD adopted the following decision on Western Sahara (Doc. A/3218).

4. Spanish Sahara (Western Sahara)

Having considered the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples on Spanish Sahara (Western Sahara) (A/31/23/Add.5 and Corr.1) and the working paper by the Secretariat on Western Sahara (A/AC.109/L.1185 and Add.1), the Committee took note of the decision adopted by the Special Committee at its 1977 session, and decided to defer any consideration to a subsequent session, without prejudice to its competence to pronounce itself on the matter.

114. When, on 5 April 1977, the CERD examined the Third Report of Morocco, which had been submitted on 9 December 1976, the Committee avoided any reference to the Non-Self-Governing Territory that the State under review had just annexed by sharing it with another State not party to the Convention. The mantle of silence was beginning to cover Western Sahara. Farewell to the Committee's Statement of Responsibility, in accordance with Article 15 of the Convention.

115. When the CERD considered the situation in Western Sahara at its 16th session in August 1977, a considerable amount of information was before it. There were significant data which the CERD could not ignore. A Non-Self-Governing Territory had been abandoned by the administering Power, invaded by two neighboring countries, ***deplored*** by the Security Council, and reaffirmed by the International Court of Justice at The Hague of the right of the Saharawi people to self-determination. And yet, the CERD "*decided to defer any consideration to a later session*." A session that, as we shall see, will take time to arrive. The CERD had simply failed to fulfil its responsibility to the Territory.

116. And pending that session, in addition to the above-mentioned events, there are other developments in the Territory:

- On 10 August 1979, a Peace Agreement is signed between Mauritania and the POLISARIO Front, by virtue of which Mauritania renounces any territorial claim to Western Sahara and leaves the part of the territory it had been occupying;
- The Kingdom of Morocco, in a new act of aggression, invaded and occupied the part of the Territory that had been occupied by Mauritania under the Madrid Tripartite Accord of November 1975.
- The United Nations General Assembly adopted two consecutive resolutions, 34/37 of 1979 and 35/19 of 1980, in which it declared ***its deep concern at the worsening of the situation as a result of the continuing occupation of Western Sahara by Morocco and the extension of that occupation to the part of Western Sahara that was the subject of the Peace Agreement concluded on 10 August 1979 between Mauritania and the POLISARIO Front***.
- For its part, the Commission on Human Rights, a body created under the Charter of the United Nations, adopted resolution 4 (XXXVI), of 15 February 1980, on Western Sahara, under the title "***Right of peoples to self-determination and its application to peoples under colonial or alien domination or foreign occupation***." In this resolution, the Commission on Human Rights establishes:
    - ***Bearing in mind*** the profound concern of the United Nations, the Organization of African Unity and the non-aligned countries regarding the decolonization of Western Sahara and the right of the people of that Territory to self-determination and independence,

- ***Deeply concerned*** about the occupation of Western Sahara by Morocco and the violations of human rights and fundamental freedoms resulting from that occupation,
- ***1. Notes*** with satisfaction the recommendations of the Organization of African Unity and the General Assembly of the United Nations concerning the exercise of the right to self-determination and independence by the people of Western Sahara, as the only means of putting an end to the violation of the fundamental rights of the Saharawi people resulting from foreign occupation of their territory, and of restoring their dignity.

117. Not only had the distant voices of a people abandoned in the desert not reached the CERD, but even the resolutions of another body of the United Nations system for human rights, such as the Commission on Human Rights, whose meetings took place in the same United Nations headquarters in Geneva, had not managed to cross the impenetrable wall next door to reach the ears of the CERD.

118. In the meantime, the CERD examined the fifth report submitted by Morocco (*CERD/C/65/Add.1*) (*UN Doc. A/35/18, par. 302-309*) during its 22nd session. According to the Summary Record of that examination (CERD/C/SR.481) of 6 August 1980, a member of the CERD said:

> "*In view of the fact that the Government seems to attach importance to decentralization and local participation, what progress has been made in transferring administrative and economic powers to the provinces and how regional development is evolving, especially in the most backward areas where nomads and Berbers live?"*

119. This Committee member did not clarify which provinces he was referring to. However, given the magnitude of the events that had taken place in the Territory, the CERD refrained from commenting on the issue when considering Morocco. There appears to be some complicity between the examinee and the examiner.

120. In contrast to this treatment of Western Sahara, when the Initial Report of Israel was being considered by the CERD at the 483rd meeting of the 22nd session in 1980 (Doc. *A/3538*, par. 330-334), a preliminary discussion on procedural issues arose. One Committee member "*requested that the Committee determine whether certain sectors of the occupied Arab territories, West Bank, Gaza, Sinai, Golan, East Jerusalem, were part of the territories covered by the State of Israel, as implied in the report*."

121. Some Committee members "*were of the view that Israel's failure to recognize the rights of the Palestinian people constituted a violation of the principles set forth in the Convention and that the Committee should therefore reject the report and state the reasons for doing so, in the form of a decision addressed to the General Assembly of the United Nations*."

122. When the representative of that State Party was invited to the discussion, he stated that in those circumstances he could not present the report or participate further in the proceedings of the Committee. Finally, the CERD decided to postpone the consideration of this report until its 23rd session.

123. Indeed, in April 1981, during its 23rd session, the CERD considered the original report submitted by Israel.

124. What happened, then, that the members of the Committee examined, in April 1981, what they had refused to examine, in August 1980? Perhaps this is the whole point of this modest research project.

125. What happened is that the State Party (Israel) has submitted, in the 23rd session, a revised version of the report submitted in the previous period. This amendment

consisted of the deletion of the parts of the report that referred to the occupied territories. In other words, the report now only covers the territory that the United Nations recognizes as the territory of the State Party.

126. Note, therefore, how the CERD, in relation to certain States, shows its refusal to accept reports that include foreign territories and, on the other hand, in relation to others, shows its agreement.

127. And, after such a long journey, the CERD was again taking decisions on Western Sahara. Thus, on 18 August 1981, the CERD adopted the following resolution on Western Sahara (Doc. A/3618. Pag.137):

> **2. Western Sahara**
>
> **The Committee believes that the prevailing situation adversely affects the enjoyment of equal and fundamental rights of the population of Western Sahara and, in this regard, endorses the resolutions of the United Nations and the Organization of African Unity reaffirming the inalienable rights of the people of Western Sahara to self-determination to be exercised under the supervision of the United Nations.**

128. It should be noted that in October 1981 (Doc. A/3740), the Human Rights Committee examined the initial report of Morocco (CCPR/C/10/Add.2), in which the Committee members asked the State Party:

> **136. In connexion with article 1 of the Covenant, it was noted that the report contained no informaton on the self-determination of the territory known as Western Sahara, and it was asked what measures had been taken to enable the population of that territory to freely determine their political status and to freely pursue their economic, social and cultural development.**
> **153. In connexion with article 1 of the Covenant, he pointed out that the requirements of this article concerning self-determination were fully met within Morocco by the constitutional provisions referred to in the report and informed the Committee of the role played by his Government in the international application of that principle, particularly in the Arab world and on the African continent.**

129. At its 27th session, the CERD considered the sixth report of Morocco, submitted in 1983 (*UN Doc. A/38/18, par. 138-147*).

130. After such an absence, Western Sahara appears in the Concluding Observations of the CERD on the report submitted by Morocco. Surprisingly, for the CERD, Western Sahara is no longer a Non-Self-Governing Territory, but a Moroccan province (par. 142 of the Concluding Observations). The suspicions of complicity between the CERD and Morocco, referred to in previous paragraphs of this paper, have now been confirmed at the 27th session of CERD.

131. Eight years after the Spanish Representative to the United Nations described it as an *invasion* and after the United Nations Security Council *deplored* it, the Green March had achieved its goal, at least, before the CERD.

On the sixth report submitted by Morocco (*CERD/C/90/Add.6*)

132. First untruth: In the summary of its report entitled "**Information on refugees and their status**," on page 3, Morocco says that it authorizes the establishment of stateless persons, when the Kingdom is not even a State Party to the Convention relating to the Status of Stateless Persons signed in New York on 28 September 1954, nor is it a State Party to the Convention on the Reduction of Statelessness of 1961. For the sake of accuracy, we have reproduced a copy of the original French version of the report.

Aussi donc, les réfugiés et les apatrides peuvent s'établir au Maroc à condition, bien entendu, de n'exercer aucune activité politique à partir du territoire marocain.

L'autorisation du réfugié ou apatride à s'établir au Maroc est délivrée par la Direction générale de la sûreté nationale en collaboration avec le Service des réfugiés et apatrides relevant du Ministère d'Etat chargé des affaires étrangères. Ils peuvent exercer, après autorisation préalable toute activité artistique, intellectuelle, scientifique et professionnelle de leur choix sans aucune limitation. Sur le plan des droits accordés les réfugiés et apatrides bénéficient d'un traitement de faveur par rapport aux autres étrangers.

133. Regarding Western Sahara, Morocco's sixth report (*CERD/C/90/Add.6*), on page 21, adds:

Pour ce qui est de la région saharienne, par exemple, où vivaient autrefois des nomades, le Gouvernement marocain a lancé dès le printemps 1976 un plan d'urgence pour que les provinces du sud soient dotées de la même infrastructure que les autres provinces du nord et ce, pour assurer le démarrage économique de ces provinces.

A cet effet, un emprunt national pour le développement du Sahara a été lancé, à l'occasion du premier anniversaire de la "Marche verte", en novembre 1976, et s'élevant à un milliard de dirhams (près de 220 millions de dollars). Cet emprunt s'est ajouté aux crédits alloués par le Trésor et par les organismes financiers spécialisés pour la réalisation de projets dans tous les domaines (agricole, transports et télécommunications, hydraulique, pêche, enseignement, santé publique, domaine social, etc.).

134. And in inglish:

For example, in the Saharan region, which was previously inhabited by nomads, the Moroccan Government has since the spring of 1976 been executing an emergency plan to provide the southern provinces with the same infrastructure as those in the north, and thus to facilitate the economic "take-off" of the south.

For this purpose a national loan for the development of the Sahara (amounting to 1 billion dirhams or nearly $220 million) was launched in November 1976 on the first anniversary of the Marche Verte. This loan is in addition to the funds allocated by the Treasury and by specialized financial institutions for the execution of projects in all fields (agriculture, transport and telecommunications, water economy, fisheries, education, public health, social affairs, etc. ...).

135. It seems that the mere mention of $220 million has had the magical effect of sweetening a whole crime of aggression committed against the people of a Non-Self-Governing Territory.

136. According to the Summary Records (*CERD/C/SR.603*), at the meeting on Thursday, 10 March 1983, during the consideration of the sixth report, one of the members of the Committee said:

11. The Moroccan Government was pursuing an ambitious programme for the development of the Saharan region. Regional problems were strong centrifugal forces in many developing countries because of discrepancies in economic development, and constituted a major challenge to the Governments of such countries. There were many cases of countries which had emerged from the colonial period united but which after a time had become divided because of uneven economic development. The importance of pursuing balanced economic development and especially of improving the standard of living of peoples in backward areas was fundamental in consolidating national unity and preserving the independence of newly independent States.

12. He noted with interest the information provided on the efforts of Morocco to secure the participation of the people in public life through assemblies, thus ensuring democratic management of local affairs.

137. Far from being dismayed by the magnitude of the violation that the report relates, nothing less than the illegal annexation of a territory through the use of force, one of the members of the CERD Committee, became a participant in these violations. And

then, what on 6 November 1975, the international community described as a *deplorable* act, on 10 March 1983, was described as an '*ambitious program of development*' and a praiseworthy exercise in '*democratic administration of local affairs*.' Finally, the occupation denounced by the General Assembly in 1979 and 1980 had been blessed by the CERD.

138. In its Concluding Observations on Morocco's sixth report, the CERD notes (Don. A/3818. Parag. 142):

> ..... Commenting on the programme for the socio-economic development of the Sahara region and the set-up of communal councils, additional information was requested in the next report on the activities and operation of the communal system; any changes or adjustments which had been deemed necessary since its establishment in 1976; how candidates for election to the communal councils were elected, and whether they could stand as individuals or private citizens or must belong to a party or other political civic group. One member expressed interest in being informed about the criteria followed by the Government in distributing the land recovered after Morocco's independence and another member showed interest in learning how Morocco guaranteed its nomads the rights of article 5, particularly in the promotion of their cultural activities.

139. It could be said that, dazzled by the flashes of magic, the Committee ended up expressing, in its Concluding Observations, its interest in the program of socio-economic development of the '*region*' of the Sahara. The magic has definitely worked the miracle of turning a Non-Self-Governing Territory into a region of a particular State.

140. Inexplicably, the CERD has departed from the doctrine of the General Assembly, approved in two resolutions (34/37 (1979) and 35/19 (1980)), in which it qualifies Morocco as an ***occupying Power***. It has separated itself from the doctrine of the Commission on Human Rights, whose resolution 12 (XXXVII) ***deplores the persistent occupation of Western Sahara***. It has separated itself from its own doctrine applied to the territory when, in the early 1970s, it claimed, before Spain, ***the self-determination and independence of the Non-Self-Governing Territory of Western Sahara***. And it has separated itself from its own doctrine in other territories under occupation, in the Middle East. And it has ended up celebrating, in Western Sahara, the result of a territorial acquisition through the threat and use of force.

141. And since the CERD cannot display the legal title, by virtue of which it has modified the distinct and separate international status of the Non-Self-Governing Territory of Western Sahara, to make it a region of Morocco, the CERD will have to assume that it has incurred a great moral debt to the Saharawi people and, of course, has incurred significant legal, political and moral irresponsibility which, at least in conscience, it will have to settle.

142. In 1991, the CERD examined Iraq's ninth and tenth periodic reports. And in its Concluding Observations (*A/46/18 par. 248-258*), the CERD, states:

Concluding observations

258. The Committee recorded that the Government of Iraq had undertaken to enter into a dialogue with the Committee and hoped that such an attitude would prevail. The Committee acknowledged that Iraq faced economic and political problems as the consequence of the recent events and that first steps had been initiated by it with a view to improving the human rights situation in general and, in particular, the situation of Kurds and other ethnic groups in Iraq. However, the Committee had not yet received the information which would enable it to assess the human rights situation in Iraq. The failure to address the treatment of ethnic groups in Iraq and, in particular, the treatment of citizens of Kuwait subsequent to 2 August 1990, since Iraq is under an obligation to respect and to ensure to all individuals under its jurisdiction or control the rights recognized in the Convention, was a matter of grave concern to the Committee. The Committee called upon the Government of Iraq to include the requested information in its eleventh report, due in 1991, and to submit the eleventh report in time for the Committee to be able to discuss it at its next session.

143. Are the treaty bodies dispossessing Western Sahara of its Non-Self-Governing Territory status in the part that concerns them? If the United Nations and all its member States continue to recognize this status for the Territory, why are the treaty bodies distancing themselves from this position? Is this really the treatment that the Purposes and Principles of the Charter of the United Nations Charter establish for the peoples of the Non-Self-Governing Territories? Are the treaty bodies really fulfilling their mission by neglecting the interests of the peoples of the Non-Self-Governing Territories?

144. When on 27 October 1981, the CCPR examined the first report of Morocco (*CCPR/C/10/Add.2*), the Committee, in its Concluding Observations (UN Doc.: A/37/40, paragraphs 134-165), noted that "*the report does not contain any information on the self-determination of the territory known as Western Sahara, and wonders what measures have been taken to enable the population of this territory to decide freely on its political situation and freely to shape its economic, social and cultural development*" (UN Doc.: A/37/40, par. 136).

145. In his response, the State representative said that "*with regard to Article 1 of the Covenant, Morocco fully complies, in accordance with the constitutional provisions mentioned in the report, with the terms of this article relating to self-determination, and informed the Committee of the role played by his Government in the international implementation of this principle, especially in the Arab world and the African continent*."

146. At the same meetings in October 1981, when considering Jordan's report, the Committee members "*expressed their deep concern at the situation arising from the **invasion** of Lebanon by Israel, which was one of the factors most affecting the enjoyment of human rights in the region to which Jordan belonged, especially the right to self-determination, the fundamental right to life*" (par. 193. *A/37/40*).

147. The first report submitted by Morocco to the CESCR is dated 16 March 1993 (E/1990/5/Add.13). And, in addressing Article 1 of the Covenant, Morocco states:

> *This right is guaranteed in Morocco. The Moroccan Constitution, adopted by referendum on 1 March 1972 and approved on March 10 of the same year, is significant in this regard, particularly its articles 1, 2 and 3 which establish the foundations of the Moroccan political regime.*

148. However, not only does the 1972 Moroccan Constitution not mention the right of peoples to self-determination, but the entire body of the Constitution does not even mention the term "***people***," either in the singular or in the plural.

> *Art. 2. La souveraineté appartient à la nation qui l'exerce directement par voie de référendum, et indirectement par l'intermédiaire des institutions constitutionnelles.*

149. In other words, sovereignty does not reside in the people, but in the nation. But Article 19 of the same Constitution states:

> *Le Roi, « Amir Al Mouminine » représentant suprême de la nation, symbole de son unité, garant de la pérennité et de la continuité de l'État, veille au respect de l'Islam et de la Constitution. Il est le protecteur des droits et libertés des citoyens, groupes sociaux et collectivités.*
>
> *Il garantit l'indépendance de la nation et l'intégrité territoriale du royaume dans ses frontières authentiques.*

150. That is, sovereignty resides in the nation, but the king is the supreme representative of that nation. Not all, but most of the world's constitutions, establish, as it cannot be less, that sovereignty resides in the people, not so the Moroccan one. Even many monarchical countries, such as Spain (Art. 1.2 SC), establish that sovereignty resides in the people.

151. In the case of constitutional monarchies, where the principle of self-determination of peoples has an impact, the United Kingdom clearly recognizes the right of these peoples to self-determination and, as such, is recognized as the administering Power in certain Non-Self-Governing Territories and complies with the obligations of Article 73.e).

152. The same is true of France, whose Constitution, in its preamble, includes the right of Non-Self-Governing Territories to self-determination. Another example is The Netherlands, where the 1954 Statute of the Netherlands Antilles and Aruba are "partners" (*landen*) of the Union that constitutes the Kingdom of the Netherlands. In the case of Denmark, another constitutional monarchy, the Danish Constitution recognizes Greenland and the Faroe Islands, in the constitutional text itself, as having their own identity and right to self-determination.

153. On the other hand, the Kingdom of Morocco not only does not recognize the Saharawi people as a people with its own identity, but even denies it the legal status of international law as a people referred to in Articles 1.2 and 55 of the Charter of the United Nations, as well as in the Advisory Opinion of the International Court of Justice at The Hague of 16 October 1975 and in many other General Assembly resolutions.

154. And since this issue is of great relevance, in addition to being reiterated several times in Morocco's reports, it should be noted that the word '**people**' appeared in the Moroccan Constitution of 1962, whose article 75 stated, "*when the people approve, by referendum, a bill that the parliament has rejected, the House of Representatives is dissolved*." Later, in the 1970 Constitution, the same article was repeated, but with the numeral 68. However, after the attempted coup d'état of 10 July 1971, the Kingdom prepared a new Constitution which was approved on 15 March 1972, where the expression '**people**' disappeared definitively until today. In the 1972 Constitution and the following ones, regarding the possibility of approving laws by referendum, instead of 'the people,' it reads 'the king.'

155. However, in the second paragraph of the Article 19 of the Moroccan Constitution, there is a fact that should have drawn the attention of the Committee members. The reference to "authentic," when it speaks of "*l'intégrité territoriale du royaume dans*

ses frontières authentiques." This expression is maintained in Article 42 of the 2011 Constitution, currently in force. This "*authentic*," to some extent, recalls the positions taken by a certain country in southern Africa that, seeking to dissociate itself from Chapter XI of the Charter, wanted to annex a neighboring Non-Self-Governing Territory.

156. If we consider that Article 4. b) of the Constitutive Act of the then African Unity, establishes as one of the Principles of the African Unity, ***respect for the borders inherited from colonialism***, it is easy to imagine the fears of expansionism that the countries of the region can see in that expression, especially if one considers that Morocco illegally occupies Western Sahara and also opposed the independence of Mauritania, claiming that is theirs, refused to join the Organization of African Unity and complained to the Security Council when it proposed to the General Assembly its admission as a United Nations Member State. Today, prominent figures in Moroccan national politics continue to claim not only Western Sahara, but the entire territory of Mauritania, western Algeria, western Mali, and part of Senegal. Morocco, moreover, has joined the now African Union in 2017, maintaining in its constitution this potential threat to the sovereignty of neighboring peoples.

157. In the aforementioned first report submitted by Morocco to the CESCR (see paragraph 146), there was no information on Western Sahara, which is why the Committee, under the heading "*D. Principal subjects of concern*" in its Concluding Observations (1994/05/30. E/C.12/1994/5), states:

> *10. As regards Western Sahara the Committee is concerned that the right to self-determination has not been exercised and expresses its hope that it will be exercised in full compliance with the provisions of article 1 of the Covenant, in accordance with plans approved by the United Nations Security Council. The Committee expresses its preoccupation about the negative consequences of the Western Sahara policy of Morocco for the enjoyment of the economic, social, and cultural rights of the relevant population, particularly through population transfer.*

158. And very importantly, a year before submitting its first report to the CESCR, Morocco had submitted, on 16 March 1993, the '*Common Core Document*' (HRI/CORE/1/Add.23), a document that States submit to all the treaty bodies and which is common to all, since it includes general information about the State Party, so that the members of each body have general information about the State in question. Interestingly, Chapter I of this CCD is entitled "Territory and Population," but there is not a single piece of information on the territory of Morocco.

159. Why this '*forgetting'* of such essential parts of the report that makes Morocco the only country in the world whose CCD does not include any geographical description of the State Party's territory?

160. Let us bear in mind that the two treaty bodies that address and review the implementation of the right to self-determination are the CCPR and the CESCR. To date, Morocco has submitted three reports to the CCPR (in 1980, 1990 and 1993), one to the CESCR (in 1993) and the CCD (in 1993). And, coincidentally, in none of the five reports had it included information on Western Sahara.

161. Let us also recall how, one year earlier, another State had submitted a report to the CERD that included occupied territories and, faced with the Committee's refusal to accept its report, had to delete the parts of the report that referred to those occupied territories. And because the treaty body committees are so absorbed in the reports submitted by States, without taking into account General Assembly or Security Council resolutions, the Advisory Opinion of the International Court of Justice, or the

resolutions of the Commission on Human Rights, Morocco preferred not to give rise to questions that may be overlooked. It is worth recalling how, in the eyes of the CERD, even though there are General Assembly resolutions that qualify the presence of Morocco in Western Sahara as an occupation, neither the CERD nor the State under review took these resolutions into account and Western Sahara was described as a 'region' of Morocco. Silence works miracles or, perhaps, barbarities and crimes, depending on where one is.

162. However, it is worth going back in time a little earlier. When the CCPR examined the initial report of the United Kingdom of Great Britain in April 1979 (UN Doc. *A/34/40*), the Committee said:

> *239. With reference to the initial report submitted by the United Kingdom concerning the Channel Islands and the Isle of Man (CCPR/C/l/Add.39), the obligation of the United Kingdom under article 1 of the Covenant was of special concern to members of the Committee since it did not seem justifiable to speak of dependence 19 years after the colonial system had collapsed. Questions were asked on how the United Kingdom interpreted the requirement to "promote" the realization of the right to self-determination; why had so much time elapsed without those territories choosing independence; how had the people expressed their desire not to be independent.*

163. In August 1979, at its sixth session (Doc. *A/34/40*), the CCPR, in considering the report of the United Kingdom (which submits separate and distinct reports from the State report, in relation to the dependent territories), in paragraphs 300 and following, reviewed the specific situation in each and every one of the Non-Self-Governing Territories for which the United Kingdom was the administering Power.

164. In paragraphs 303 and 304, the Committee "*stressed that continued dependency was a continued violation of article 1 of the Covenant and of the relevant resolutions of the General Assembly under which the administering Powers were* ***duty-bound to take positive steps and effective measures*** *to enable the peoples of these territories to decide their status and exercise their right to self-determination and to full control over their natural resources. In this respect, it was observed that* ***the United Kingdom interpreted its obligations in a passive manner and did not make any effort to facilitate the exercise of the right*** *of self-determination by the peoples of the territories. Questions were asked on whether the Government* ***consulted regularly and democratically*** *the peoples of the dependent territories concerning their wish to attain independence or otherwise. Referring to the British Indian Ocean Territory which he understood to be a new dependent territory created in 1965 and consisting of such islands as Diego Garcia and other parts of the Chagos Archipelago, one member expressed concern at the fate of the people who used to live there and asked whether these people had the right to return to the place of their birth.*"

165. Later, in 1985, in response to the second report submitted by Spain, the CCPR Committee asked the following question:

> "478. *It was asked what Spain's position was on the illegal occupation of Namibia, the situation of the Palestinian people and the apartheid regime in South Africa.*"

166. In their response, the representative of Spain, argued that (paragraph 249) "*their Government had established the basis for the self-determination of Western Sahara and that it would continue to support the principles that had led it to take such action. Furthermore, his Government had spoken out in favor of the self-determination of peoples in all international forums and had expressly and unreservedly condemned the delaying policies of the Government of South Africa on the question of Namibia.*"

167. Note how the CCPR Committee, in examining an Administering Power that had abandoned its obligations under Chapter XI of the Charter, asks it about different Territories. One might ask what are the sequences of the legal logic that led the CCPR Committee to ask Spain about the situation of Namibia, Palestine, and Apartheid, but not about Western Sahara.

168. Allow us to take another example when the former USSR was occupying Afghanistan. In examining the second report of the USSR (CCPR/C/28/Add.3), in its Concluding Observations (UN Doc. *A/40/40*) on the right to self-determination in its external and internal aspects, the Committee states:

> 260. "*…How it was ensured that the presence of the Soviet Union's armed forces in other countries and especially in Afghanistan was compatible with the right to self-determination.*"

169. These issues of information available to the treaty body committees are highly topical. At the sixth session of the CCPR on 9 April 1979, during the adoption of the new rules of procedure (agenda item III), the Representative of the United Nations Secretary-General said:

> 41. *The representative of the United Nations Secretary-General, referring to Article 97 of the Charter of the United Nations, Article 36 of the Covenant and Rule 23 of the provisional rules of procedure, stated that the "Secretariat of the Committee" was an integral part of the United Nations Secretariat…"*

170. The provisional rules of procedure adopted at the first and second sessions of the Human Rights Committee in 1977 (Annex II of the report of the Committee, A/32/44) establish:

> *SECRETARIAT*
>
> *Art. 23*
>
> *1. The UNSG shall provide the secretariat of the Committee and of such subsidiary bodies as may be established by the Committee.*
>
> *2. The UNSG shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the Covenant.*
>
> *Art. 24.*
>
> *The UNSG or their representative shall be present at all meetings of the Committee and may, subject to Art. 38 of these rules, make either oral or written statements to the Committee or its subsidiary bodies.*
>
> *Art. 26*
>
> *The UNSG shall be responsible for promptly informing the members of the Committee of all matters that may be submitted to the Committee for consideration.*

171. In other words, the treaty body committees, which have such a direct connection with the United Nations Secretariat, have much more information at their disposal than the States could provide in their respective reports. This is particularly relevant in the specific case of Western Sahara, since if a particular State fails to provide the required information, there is always the option of resorting to the information held by the United Nations Secretariat in order to have a global view of the issue being addressed, especially in the case of a Non-Self-Governing Territory, without an administrative Power that assumes the obligations of Article 73.e. of the Charter of the United Nations.

172. The **General Guidelines** regarding the form and content of reports submitted by States Parties under article 40 of the Covenant, adopted in 1977 by the CCPR Committee at its first and second sessions (Annex IV of the Committee's report, A/32/44), state:

> *2[…] Compliance with the following guidelines will help to ensure that reports are submitted in a uniform manner and will enable the Committee and the States Parties to have a complete picture*

of the situation in each State regarding the implementation of the rights referred to in the Covenant.

3. The report should include the following two parts:

Part I: General. This part should briefly describe the general legal framework within which civil and political rights are protected in the reporting State. In particular, it should indicate the following:

a) Whether the rights referred to in the Covenant are protected by the Constitution or by a "Bill of Rights" …

Part II: Information relating to each of the articles in Parts I, II and III of the Covenant. This part should describe, in relation to the provisions of each article:

a) a) The legislative, administrative, or other measures in force with respect to each right;

b) b) Any restrictions or limitations, even of a transitory nature, imposed by law, practice or otherwise, on the enjoyment of the right;

c) c) Any other factors or difficulties affecting the enjoyment of the right by persons within the jurisdiction of the State;

d) *d) Any other information on the progress made in the enjoyment of the right*.

173. These General Guidelines are of great importance because they have a direct bearing on the Committee's treatment of each State Party, and this results in respect for or failure to respect a cardinal principle: the principle of equal rights of States, enshrined in Article 1 of the Charter. As will be seen below, the treatment of certain States has led to an unacceptable breach of the principle of equal rights of States, in contravention of the Addis Ababa Guidelines.

174. In its second report to the CESCR, presented on 27 August 1998, Morocco does two things. On the one hand, the report, like the previous ones, still makes no mention of Western Sahara. But there is one new fact. This time Morocco corrects the '*forgetfulness*' committed in its five previous reports to the CCPR, the CESCR and the CCD. Now, in its second report (E/1990/6/Add.20), Morocco reflects the State Party's territorial description. But how does it do so? Morocco does so by phagocytizing, without citing it, Western Sahara in the geographical description of the territory. Let us quote the appropriate paragraph (*the underlining is mine*):

GENERAL

I. LAND AND PEOPLE

4. Morocco lies in the north-west corner of the African continent between 21° N and 36° N. Its area is 710,850 km². It is bounded to the north by the mediterranean Sea and to the west by the Atlantic Ocean. Its land borders are limited to the east by Algeria and to the south by Mauritania.

175. However, for the UN, Morocco is located between 27º 40' and 36º North latitude, it has an area of 446,550 square kilometers and is bordered to the south by Western Sahara, not Mauritania. In fact, in Mauritania's Common Core Document (*HRI/CORE/1/Add.112*), the country states:

2. It is bordered to the northwest by Western Sahara, to the north by Algeria, to the east by Mali, to the south by Mali and Senegal, and to the west by the Atlantic Ocean.

176. Why do the treaty bodies accept this type of report, where a State Party annexes a foreign territory using force? Would they also accept a report in which, for example, the United States of America set its southern borders on the Mexican peninsula of Yucatan or its northern borders in Greenland? Why then do they remain silent when the victim is the people of a Non-Self-Governing Territory?

177. In July 1978, when considering the initial report of the Federal Republic of Germany (CCPR/C/1/Add.18), the CCPR, in its Concluding Observations (UN Doc. A/33/40, par. 337), noted the following:

"337. With regard to the reference in the report to the provision of the Fundamental Law calling on all German people to achieve, on the basis of self-determination, the unity and freedom of Germany, one Committee member observed that ***the promotion of the right to self-determination should not be perverted for the purpose of furthering expansionist objectives or justifying claims to foreign territories, or to claim jurisdiction over foreign citizens****."*

178. The rigour with which the treaty body committees examine certain States is commendable. But it is a great pity that they do not show the same rigor when it comes to the interests of the peoples of the Non-Self-Governing Territories, which the Charter establishes as a "sacred trust."

179. Before another treaty body, the CERD, Morocco has cited Western Sahara and provided some information since its sixth report in 1982. Does racial discrimination have more to do with the Territory than the right to self-determination? Why then does it omit information to the CCPR and CESCR that it does provide to the CERD? For example, in 1982 (sixth report), it refers to the investments made by Morocco in the "*Saharan region*" during the *deplorable* Green March. In 1984, the seventh report dedicates seven paragraphs to what Morocco calls "*Program for the socio-economic development of the Saharan provinces*."

180. In other words, in the case of the two treaty bodies directly involved with the right to self-determination of peoples, Morocco has acted with such secrecy that the illegal annexation of a Non-Self-Governing Territory has gone unnoticed. On the other hand, with respect to the other treaty body, the CERD, the annexation has taken on an economic and progressive character.

181. It has taken no less than thirty-five years for Morocco to cite Western Sahara in its reports to the CCPR and CESCR. The territory and the people whose existence had been denied for thirty-five years were suddenly cited sixteen times, in the sixth report submitted to the CCPR, on 15 June 2015, becoming the central issue in the report. Why? It is true that during the dialogues with the State, in its responses and in the Committee's Concluding Observations, Western Sahara has always appeared, but in the State Party's reports, presented to the CCPR and the CESCR, it has never appeared of its own accord, it has always omitted it in its reports. And certainly, not reporting something is synonymous with denying its existence.

182. The reason for this flurry of allusions to the Territory in the State Party's report is that the State, in relation to Article 1 common to both Covenants of 1966, declares that it is only willing to grant autonomy within its alleged national sovereignty. In other words, a State Party makes a change in the legal effects of a specific provision of the Treaty to which it is a State Party.

183. However, such a modification is incompatible with the object and purpose of the treaty since it violates a right on which all other rights depend. Consequently, the CCPR and CESCR Committees cannot accept the modification of the legal effect of the provision contained in the first common article of their respective treaties.

184. With regard to the enjoyment and implementation of rights in the Non-Self-Governing Territory of Western Sahara, how can the treaty bodies, by virtue of the principle of the universality of human rights, assist the people of Western Sahara in the enjoyment and implementation of human rights?

185. Clearly, to help, the treaty bodies first need information. They need reports. Therefore, the treaties impose reporting obligations. The purpose of reporting is to give treaty body members a real, comprehensive, and up-to-date picture of the

situation in each territory. Because it is based on this real, comprehensive, and up-to-date vision and understanding of the situation that the treaty bodies will be able to provide recommendations, guidance, and advice on technical cooperation in the field of human rights.

186. However, as far as Western Sahara is concerned, the treaty bodies will never be able to have a real, global and updated vision of the human rights situation, since the reports submitted by Morocco only cover a part of the territory and a part of the population. Based on these reports, the treaty bodies will always have a partial, limited, and biased view of the actual human rights situation of this people, as explained in the following paragraph.

187. Western Sahara is divided by a military wall, the largest in the world, making Western Sahara the most heavily mined territory in the world. A part of the population lives in the occupied areas west of the wall and the other part lives in the liberated areas east of the wall or in the Saharawi camps, under the jurisdiction of the Saharawi Arab Democratic Republic, a state that is not a member of the United Nations but is a member and founder of the African Union.

188. The treaty bodies must, of course, ensure the enjoyment of human rights by the Saharawi people as a whole and not divided into Bantustans.

189. The reports submitted by Morocco and accepted by the treaty bodies, instead of preserving the unity of the Territory and its population, break it in favor of maintaining a supposed and illegitimate territorial unit of the occupying Power, achieved through the use of threat and force.

190. Consequently, the observations, recommendations and technical cooperation that could be adopted by the treaty bodies carry with them the danger of perpetuating a situation derived from the threat and use of force, also perpetuating the division of that people and its suffering, in the interest of preserving the illegitimate territorial unit of the occupying Power.

191. Take, for example, the case of General Comment No. 14 (2000) of the CESCR, where section V invites United Nations Agencies and Bodies to provide technical assistance to States to achieve the objectives of the Covenant (E/C.12/2000/4) in relation to the right to the highest attainable standard of health. This commentary, in particular, reflects the distortions that occur in the United Nations system when a treaty body recommends a certain technical assistance (based on a report from a State Party), but the United Nations Agency, WHO, which is the recipient of that recommendation to provide assistance, has a different notion of the geographical reality contained in the report of said State Party and, in its actions within that State, never goes beyond its internationally recognized borders. It goes without saying that, even in the unlikely event that it does, its actions will never reach the population beyond the wall.

192. If the States Parties to the various human rights treaties, which have legal title to administer certain territories, submit separate and specific reports for those territories, respecting the Harmonized Guidelines for reporting also in those Non-Self-Governing Territories, the principle of equal treatment invites the consideration that, in the case of a State Party which does not have legal title to administer a particular territory, it is also required, all the more so, to submit separate and specific reports for that territory respecting the Harmonized Guidelines in the related report. **Therefore, treaty bodies should not admit and examine reports submitted by Morocco that**

include Western Sahara. To do so would be an unacceptable breach of the principle of equality of rights, contained in Article 1 of the Charter and would also be a clear violation of Article 7 of the Addis Ababa Guidelines.

193. At this point, it is useful to see what is happening in the other Non-Self-Governing Territories included in the United Nations list in relation to the reports of States Parties that are submitted to the human rights treaty bodies.

194. Take, for example, the case of the United Kingdom of Great Britain and Northern Ireland. This State presents its Reports, making a clear distinction between the metropolitan territory, the overseas territories, and the territories dependent on the crown.

195. With respect to the aforementioned "Common Core Document," the States give a faithful description of the legal reality of the territories where they exercise jurisdiction. Thus, in their reports, they reflect the differences, if any, between the various territories over which they exercise some form of control and, in those reports, they respect the Harmonized Guidelines on Reporting in relation to Non-Self-Governing Territories.

196. Some paragraphs from the reports of the "Common Core Document" of some States are presented below to illustrate the different and separate treatment given by those States to the territories where they exercise their jurisdiction.

a. New Zealand.

Common Core Document forming part of the reports of States Parties. (HRI/CORE/1/Add.33/Rev.2), 11 September 2002.

2. New Zealand has jurisdiction over ***the non-self-governing territory of Tokelau. It takes seriously its obligation under the Charter of the United Nations to develop self-government in Tokelau, with a view to the exercise of self-determination****. New Zealand provides for the* ***preparation of reports in respect of Tokelau****. Tokelauans, Niueans and Cook Islanders are all New Zealand citizens.* ***Niue and the Cook Islands are self-governing States in free association with New Zealand****. Under the free association relationships, the Governments of Niue and the Cook Islands have full legislative and executive powers.*

b. United Kingdom of Great Britain and Northern Ireland.

Common Core Document forming part of the reports of States Parties. (HRI/CORE/1/Add.62/Rev.1), 30 January 2001.

1. In accordance with the consolidated guidelines for the initial part of the reports of States Parties (HRI/1991/1) which was transmitted under cover of the Secretary-General's Note dated 26 April 1991 (HRI/CORE/1), the Government of the United Kingdom submits, annexed herewith, the core document (the "country profile") in respect of:

i) Each of its ***Dependent Territories overseas*** *to which one or more of the various United Nations human rights treaties applies, that is to say, Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, the Falkland Islands, Gibraltar, Montserrat, Pitcairn, St. Helena and the Turks and Caicos Islands (annexes I to X).*

Common Core Document forming part of the reports of States Parties. (HRI/CORE/GBR/2014), 17 June 2014.

The report covers specific and separate information for the following Territories: Anguilla; Bermuda; Cayman Islands; Falkland Islands; Gibraltar; Montserrat; Pitcairn, Henderson, Ducie and Oeno; St. Helena, Ascension, Tristan da Cunha; Turks and Caicos Islands; and Virgin Islands.

1. This Core Document covers the United Kingdom, and also the British Overseas Territories and the Crown Dependencies which ***are not part of the UK*** *but for which the UK is responsible on international relations and defence.*

c. United States.

Common Core Document forming part of the reports of States Parties (HRI/CORE/USA/2005), 16 January 2006

110. A significant number of United States citizens and/or nationals live in areas ***outside the 50 states*** *and yet within the political framework and jurisdiction of the United States. They include people living in the District of Columbia,* ***American Samoa****, Puerto Rico, the United States* ***Virgin Islands****,* ***Guam****, the Northern Marianas, and the remaining islands of the Trust Territory of the Pacific. The governmental framework in each is largely determined by the area's historical relationship to the United States and the will of its residents.*

112. ***American Samoa is an unincorporated territory*** *of the United States.*

114. ***The United States Virgin Islands are an unincorporated territory*** *of the United States.*

115. ***Guam is an unincorporated territory*** *of the United States.*

Common Core Document of the United States (HRI/CORE/USA/2011), 12 September 2012.

27. A significant number of United States citizens and/or nationals live in areas outside the 50 states and yet within the political framework of the United States. These include persons living in the District of Columbia, American Samoa, Puerto Rico, the Virgin Islands, Guam, and the Northern Mariana Islands. The governmental frameworks in these areas ***are largely determined by the area's historical relationship to the United States and the will of their residents****.*

82. American Samoa is an ***unincorporated territory of the United States****. An individual born on American Samoa does not have Electoral College votes.*

85. The United States Virgin Islands is an ***unincorporated territory of the United States****. These islands were acquired from Denmark in 1917.*

86. Guam is an ***unincorporated territory*** *of the United States.*

d. France.

Common Core Document forming part of the reports of States Parties (HRI/CORE/1/Add.17/Rev.1), 15 March 1996

2. The combined populations of the overseas departments (Guadeloupe, Martinique, Guyana, Reunion), the ***overseas*** *territories (New Caledonia, French Polynesia, Wallis-and-Futuna) and the communities of Saint-Pierre-and-Miquelon and Mayotte amount to 2,020,000.*

France submitted another CCD on 3 November 2017 (HRI/CORE/FRA/2017):

A. Land

1. France covers a territory of 551,602 square kilometers, with the exception of the ***overseas territorial collectivities*** *(128,101 square kilometers) and the French Southern and Antarctic Territories (432,000 square kilometers).*

2. The country comprises ***metropolitan France*** *(territories in Europe), and overseas territorial collectivities. The latter are divided into two categories:*

- *The overseas departments and regions (DROM): Guadeloupe, French Guyana, Martinique, Mayotte and Réunion (which replace the* ***overseas departments****, or DOM);*
- *The overseas collectivities (COM): French Polynesia, Saint-Barthélemy and Saint Martin, Saint Pierre and Miquelon, and Wallis and Futuna replaced the overseas territories, or TOM.*

3. With the exception of the overseas collectivities, France is divided administratively into 18 regions (13 in metropolitan France and 5 overseas), 101 departments (96 in metropolitan France and 5 overseas) and 36,658 municipalities (including 129 overseas).

4. ***New Caledonia****, Clipperton Island and the French Southern and Antarctic Territories* ***have a special status***

.

e. **Israel**.

Common Core Document forming part of the reports of States Parties (HRI/CORE/ISR/2008), 25 July 2008

2. The total extent of Israel's territory within its boundaries and ceasefire lines is ***27,800 square kilometers*** *long and narrow in shape, it is some 450 km. in length and about 135 km. across at*

*the widest point, and roughly 13 km. across at the narrowest point. Israel is bordered by Lebanon to the north, Syria to the northeast, Jordan, the **Palestinian Authority** and some disputed areas to the east, Egypt, the **Gaza Strip** and the Mediterranean Sea to the west.*

f. **Mauritania**.

Common Core Document forming part of the reports of States Parties. (HRI/CORE/1/Add.112, 8 January 2001)

*2. The country is bounded on the north-west by **Western Sahara**, on the north by Algeria, on the east by Mali, on the south by Mali and Senegal and on the west by the Atlantic Ocean.*

g. **Morocco**.

Common Core Document forming part of the reports of States Parties. (HRI/CORE/1/Add.23/Rev.1), 15 April 2002.

*Morocco is a Muslim country whose culture is Arab-Berber. Its official language is Arabic, and it is located in the north-west corner of the African continent, between **21º** and 36º latitude north. Its area is **710,850 square kilometers**. It is bounded on the north by the Mediterranean Sea, and on the west by the Atlantic Ocean. It has land borders with Algeria in the east and **Mauritania in the south**.*

Note how, throughout the 2002 Common Core Document, there is not a single reference to the territory of Western Sahara, yet it is included in those geographical references.

Note also how the reference to both the land area (**710,850 square kilometers**) and the northern neighboring area of Mauritania, far from meeting the requirements of accuracy that should guide the reporting process, misleads the expert members of the treaty bodies by offering them information that is not in line with reality. This lack of truthfulness and accuracy undoubtedly has a negative impact on the conviction of the expert members of the treaty bodies.

Morocco submitted another Common Core Document which is part of the reports submitted by States parties. (HRI/CORE/MAR/2012), 10 October 2012.

*1. The Kingdom of Morocco is an Islamic State situated in North Africa between latitudes **21** and 36 degrees North. It has an area of **710,850** square kilometers and is bound by the Mediterranean Sea to the North, the Atlantic Ocean to the West, Algeria to the Ease and **Mauritania to the South**.*

*22. With a view to the adoption of advanced regionalization, the territorial organization of the Kingdom of Morocco is divided into states composed of provinces and regions, which are in turn divided into administrative districts, divided in turn into subsidiary administrative territories and headmen. **In regard to territorial authorities, in 2011, the Kingdom had 16 regions, 75 prefectures and provinces, and 1,503 communes, 221 of which were urban and 1,282 rural**.*

There is not a single reference to Western Sahara in the entire Common Core Document for 2012.

Note also how the reference to the 21º parallel of latitude north, to the land surface (**710,850 square kilometers**), to Mauritania's northern neighboring area and to the number of provinces, prefectures and municipalities, also does not meet the requirement of accuracy and tends to create confusion in the treaty bodies when it comes to forming their opinion of the State. And if the treaty body has just recently examined the Islamic Republic of Mauritania, the confusion may well be much greater, as the Islamic Republic of Mauritania, in its Common Core Document, does not cite the Kingdom of Morocco as a neighbor, but Western Sahara.

h. **Denmark**.

Common Core Document forming part of the reports of States Parties. (HRI/CORE/1/Add.58), 20 April 1995.

12. The statistical data referred to above do not include the Faroe Islands and Greenland.

13. The Faroe Islands cover an area of 1,399 square kilometers with a population of 45,347 as of 1 January 1994.

14. Greenland covers an area of 2,175,600 square kilometers with a population of 55,419 as of 1 January 1994.

In its CCD, updated 29 March 2018, (HRI/CORE/DNK/2018), Denmark states:

*3. **Greenland and the Faroe Islands are part of the realm but enjoy extensive Self-Government arrangements**. The Faroe Islands cover an area of 1,399 square kilometers, while Greenland covers an area of 2,166,086 square kilometers.*

i. **NETHERLANDS**.

Common Core Document forming part of the reports of States Parties. (HRI/CORE/1/Add.66), 12 December 1995.

Title of the report:

*NETHERLANDS (**EUROPEAN PART OF THE KINGDOM**)*

*1. The Kingdom of the Netherlands comprises the Netherlands in Europe, and the **Netherlands Antilles and Aruba in the Caribbean**.*

31. […] *In 1986 Aruba became a separate country within the Kingdom, under the Charter, and now has the same constitutional status as the two other countries, the Netherlands, and the Netherlands Antilles.*

On the same date of 12 December 1995, the Netherlands submitted a specific Common Core Document (HRI/CORE/1/Add.67), under the title:

NETHERLANDS: THE NETHERLANDS ANTILLES.

1. The Netherlands Antilles is an autonomous part of the Kingdom of the Netherlands and consists of five islands: Bonaire with its capital Kralendijk, Curaçao with its capital Willemstad, Saba with its capital The Bottom, St. Eustatius with its capital Oranjestad and St. Martin with its capital Philipsburg.

Later, on 27 March 2003, the Netherlands presented another specific Common Core Document (HRI/CORE/1/Add.68/Rev.1), under the title:

Netherlands: Aruba.

4. Aruba, which until 1986 formed part of the Netherlands Antilles, is now an autonomous partner within the Kingdom of the Netherlands. Aruba is an island of 70.9 square miles (193 square kilometers) situated in the Southern Caribbean, approximately 18.6 miles (30 kilometers) from the northern coast of South America, 12° north of the Equator and 70° west longitude. The island is geographically divided into eight regions and each region is subdivided in several zones.

197. The comparison between the information provided by the reports reproduced above on the one hand and the information provided by the reports submitted by the Kingdom of Morocco on the other hand is quite clear. In the case of Western Sahara, its international subjectivity as a distinct and separate Non-Self-Governing Territory has been diluted in the Moroccan national landscape described in the report. The other Non-Self-Governing Territories, by contrast, retain their identity, which is respected by the administering Powers. Even the Netherlands and Denmark, by virtue of their national law, reflect in their reports the distinct realities of Aruba, Curaçao, the Faroes and Greenland.

198. To rephrase the question quoted in paragraph 85, if treaty bodies receive and consider reports where certain Non-Self-Governing Territories are treated differently, why do they accept and consider other reports, where another Non-Self-Governing Territory is treated differently? What is the legal basis for the treaty bodies to receive and consider, in support of a report, a document that treats the Non-Self-Governing

Territory of Western Sahara differently from other Non-Self-Governing Territories and that deprives it of the protection afforded by Chapter 11 of the Charter of the United Nations with regard to the transmission of information?

199. And here it is worth mentioning Article 1 of the Charter of the United Nations, which enunciates the principle of equal rights. By granting the Kingdom of Morocco a different treatment from the treatment granted to other States, this principle of equal treatment is being violated, since the Kingdom is given a more favorable treatment than other States.

200. Faced with this situation, we are forced to ask the following question: have the treaty bodies, in seeking to promote and protect human rights in Western Sahara, sought out what is the wish of the population of the territory, which the Charter of the United Nations establishes as a "*sacred trust*"? Have they consulted their legitimate representative? Have they asked the people of Western Sahara whether they accept that it is the Kingdom of Morocco which takes responsibility for ensuring, as a sovereign State, the rights set out in the treaties? Have they asked whether they accept that it is the Kingdom of Morocco which interacts, on their behalf, with these treaty bodies as if it were an integral part of the Kingdom? In the end, Non-Self-Governing Territories, like States, deserve the same respect.

201. **The treaty bodies cannot, on their own, transfer the promotion and protection of human rights in Western Sahara to the Kingdom of Morocco without recognizing Morocco's status as an occupying Power and complying with its obligations under international humanitarian law, at the risk of recognizing the Kingdom's sovereignty over Western Sahara.** And, in this sense, they should demand the full application, in the occupied territory, of international humanitarian law, as *lex specialis*, to guarantee the distinct and separate international legal status of the Territory.

202. Article 2.1 of the ICCPR and 2.2 of the ICESCR state that "each State Party to the present Covenant undertakes ***to adopt measures***…" In relation to Western Sahara, have any of these Committees asked themselves in what capacity, the Kingdom of Morocco, should *adopt such measures*? In other words, should Morocco *adopt measures* in Western Sahara as an integral part of its national territory or as a distinct and separate territory? How could such *adoption of measures* not contradict the principle of illegality of any territorial acquisition resulting from the threat or use of force?

203. The obligations to 'respect', 'protect', and 'fulfil' arising from that obligation to Take Action can only be in conformity with international law if they respect the distinct and separate international legal status of the Territory, established as a basic principle of international law, which binds all States, organizations, agencies, and members of treaty bodies, since it generates obligations *erga omnes*.

204. The reports submitted by Morocco to the human rights treaty bodies, both the common core document and the specific reports for each cycle and each treaty body, are not in conformity with the Harmonized Guidelines on reporting.

205. However, at its 36th session, held from 1 to 19 May 2006, when it adopted its Concluding Observations in relation to the five countries examined during that period, the CESCR stated that, in the case of Morocco (E/C.12/MAR/CO/3), Mexico (E/C.12/MEX/CO/4) and Liechtenstein (E/C.12/LIE/CO/1), **the reports had been prepared in accordance with the Committee's guidelines**. But the same is not true

of Canada (E/C.12/CAN/CO/4) and Monaco (E/C.12/MCO/CO/1). And, we insist, Morocco had not submitted a separate or specific report on Western Sahara; this report by Morocco, in paragraph 5, refers to the Common Core Document (HRI/CORE/1/Add.23/Rev.1), where the geographical description includes Western Sahara without citing it; and in the specific report, Western Sahara appears as an integral part of Morocco. This reveals that this statement of conformity is not close to the facts.

206. In the case of the CESCR Committee, in addition to the Harmonized Guidelines, in its General Comments No. 1 (*No. 1 to No. 19: HRI/GEN/1/Rev.9(Vol. I)*); No. 20: (*E/C.12/GC/20*); No. 21: (*E/C.12/GC/21*), the Committee sets out guidelines for reporting and, also in 2008, adopts Guidelines on Treaty-Specific Documents to be submitted to the CESCR Committee, which are basically an adaptation of the above-mentioned Harmonized Guidelines to the specific content of the ICESCR.

207. The second paragraph of Annex to the Guidelines on Treaty-Specific Documents (E/C.12/2008/2) establishes:

> *2. In relation to the rights recognized in the Covenant, the treaty-specific document should indicate:*
>
> *a. Whether the State party has adopted a **national** framework law, policies and strategies for the implementation of each Covenant right, identifying the resources available for that purpose and the most cost-effective ways of using such resources.*
>
> *b. Any mechanisms in place to monitor progress towards the full realization of the Covenant rights, including identification of indicators and related **national** benchmarks in relation to each Covenant right.*
>
> *g. Statistical data on the enjoyment of each Covenant right, **disaggregated by age, gender, ethnic origin, urban/rural population and other relevant status**, on an annual comparative basis over the past five years.*

208. When we speak of the ***national sphere***, we mean the internationally recognized territory of the State in question, without including a foreign territory, whose distinct and separate legal status is enshrined in international law. Accordingly, the CESCR Committee, when considering reports submitted by Morocco, should ask whether the Non-Self-Governing Territory of Western Sahara falls within the scope of a *Moroccan framework law or **national** strategy or the identification of Moroccan **national** benchmarks*. And if it does not, the Committee should require the submission of a separate and specific report for Western Sahara. Unfortunately, the Committee does neither, which reveals, if not the complicity, at least the connivance of the Committee, in the idea that this Territory is part of Morocco.

209. In its Concluding Observations on the Fourth Report of Morocco (E/C.12/MAR/CO/4) of 21 October 2015, the CESCR stated, under heading 'D. Other Recommendations,' paragraph 54:

> *54. The Committee requests the State party to submit its fifth periodic report, **in accordance with the guidelines adopted by the Committee in 2008** (E/C.12/2008/2), by 31 October 2020.*

210. We therefore have another opportunity to compare the degree of impartiality and independence of the members of the committees of the treaty bodies, and to verify the extent to which the principle of equal treatment of States is respected.

PART THREE: THE REPORTS SUBMITTED BY MOROCCO AND THE HARMONIZED GUIDELINES ON REPORTING

211. In the following paragraphs, we briefly review the Harmonized Guidelines on Reporting to the Human Rights Treaty Bodies (HRI/GEN/2/Rev.6) to see whether or

not the inclusion of a Non-Self-Governing Territory in a State Party's report is in accordance with the Harmonized Guidelines.

Purpose of Guidelines

212. Article 2 of the Harmonized Guidelines. "Commitment to report on ***measures adopted to ensure the enjoyment of rights***."

The commitment to Adopt Measures is embodied in the obligations of States Parties: To respect (refrain from interfering with the enjoyment of the right); To protect (prevent others from interfering with the enjoyment of the right); and To fulfil (take appropriate steps towards the full realization of the right).

Recalling the *erga omnes* obligations contained in Resolution 2625 (XXV), regarding the distinct and separate legal status of the Territory, and the Principle of illegality of any territorial acquisition by the threat or use of force, one should ask how **measures can be adopted** without violating the status of the territory? Would such measures be legal?

What is the point of the treaty bodies urging certain States to ***adopt measures***, when such Measures conflict with international law?

213. Article 3 of the Harmonized Guidelines.

*Reports will enable a **complete picture**, set within the **wider context of the State's international human rights obligations, and provide a uniform framework…***

The reports prepared by Morocco prevent the treaty bodies from obtaining **a complete picture of the implementation of the Covenant**, since the report under review does not respect the distinct and separate legal status of a Non-Self-Governing Territory. Instead of presenting a separate or specific report, as is the case with other Non-Self-Governing Territories, Morocco presents its report by dissolving Western Sahara within the national scope covered by its report.

Nor do these reports submitted by Morocco allow the treaty bodies to see the **broader context of the State's international human rights obligations**, since by omitting any allusion to the situation of military and illegal occupation of the Territory, Morocco escapes the requirement of the application of international humanitarian law in the occupied territory.

And finally, the perspective that the treaty bodies could obtain in relation to Western Sahara, guided by the reports submitted by Morocco, will always be biased, because half of the people of the Territory are outside of Morocco's control. Consequently, these reports induce the treaty bodies to deprive this other half of the people of the Territory of the benefits of the principle of universality of human rights that they deserve.

214. Article 4.b of the Harmonized Guidelines.

*The Harmonized Guidelines aim at **improving the effectiveness of the treaty monitoring system by** helping each Committee to consider the situation regarding human rights **in** every State party **on an equal basis**.*

If the reports are prepared according to the human rights situation **in** each State and respecting the legal status of each Territory, the Committees could indeed conduct the review on an equal basis.

But when a State Party prepares its report without respecting the legal status of a non-self-governing territory and the treaty bodies accept and examine the report, prepared differently from other States, it is clear that the basis for equality is broken.

Commitment to treaties

215. Article 8 of the Harmonized Guidelines.

> *The reporting process constitutes an* ***essential*** *element in the continuing commitment of a State to* ***respect, protect and fulfil the rights*** *set out in the treaties to which it is party. This commitment should be viewed within the wider context of the obligation of all States to promote respect for the rights and freedoms, set out in the* ***Universal Declaration of Human Rights and international human rights instruments, by measures, national and international, to secure their universal and effective recognition and observance****.*

Considering that as a Non-Self-Governing Territory, Western Sahara is subject to Chapter XI of the Charter and resolution 1514, and as an occupied Territory, it is subject to international humanitarian law, it is clear that, in light of Article 8 of the Guidelines, Western Sahara cannot be part of the report submitted by the Kingdom of Morocco.

Review of the implementation of human rights at the national level

216. Article 10 of the Harmonized Guidelines.

> *The reporting process should encourage and facilitate,* ***at the national level****, public scrutiny of government policies and* ***constructive engagement with relevant actors of civil society*** *conducted in a spirit of cooperation and mutual respect, with the aim of advancing the enjoyment by all of the rights protected by the relevant convention.*

As it could not be otherwise, here it refers to the ***national level*** and Western Sahara is not part of the Kingdom of Morocco at the national level. Perhaps this is the article that best reflects the total dissatisfaction with the reports submitted by Morocco that include Western Sahara, since the Saharawi people are not part of the civil society of the State under review, nor can there be a spirit of cooperation and mutual respect while they are denied their legitimate right to self-determination and independence, and are condemned to live in exile or under military and illegal occupation.

If the Harmonized Guidelines encourage constructive engagement, a spirit of cooperation and mutual respect with relevant actors in civil society, it is our understanding that the peoples of the Non-Self-Governing Territories are equally deserving of such constructive engagement, spirit of cooperation and mutual respect.

Basis for constructive dialogue at the international level

217. Article 11 of the Harmonized Guidelines.

> *The reporting process creates a basis for constructive dialogue between States and the treaty bodies.*

However, when it mentions the States Parties, it refers to the States Parties at their internationally recognized borders or in accordance with the legal status that each State Party has in a territory. Moreover, there is no framework for dialogue between the treaty bodies and the legitimate representative of the Non-Self-Governing Territory of Western Sahara. Unfortunately, the treaty committees seek to fill this gap through dialogue with the party that specifically denies the Territory's status as a Non-Self-Governing Territory.

Collection of data and drafting of reports

218. Article 13 of the Harmonized Guidelines.

> *States should consider setting up an appropriate institutional framework for the preparation of their reports. These institutional structures-which could include an inter-ministerial drafting Committee and/or focal points on reporting within each relevant government department-could support all of the State's reporting obligations under the international human rights instruments and, as appropriate, related international treaties (for example, Conventions of the International Labor Organization and the United Nations Educational, Scientific and Cultural Organization), and could provide an effective*

mechanism to coordinate follow-up to the concluding observations of the treaty bodies. Such structures should allow for the involvement of sub-national levels of governance where these exist and could be established on a permanent basis.

Again, the inclusion of Western Sahara in the reports submitted by the Kingdom of Morocco would be contrary to the recommendations of this article, since Western Sahara cannot be part of any institutional structure of the Kingdom of Morocco as long as the people of Western Sahara do not exercise their inalienable right to self-determination and independence, as required by Resolution 2625 (XXV).

219. Article 15 of the Harmonized Guidelines.

These institutional structures should develop an efficient system for the collection (from the relevant ministries and government statistical offices) of all statistical and other data relevant to the implementation of human rights, in a comprehensive and continuous manner. States can benefit from technical assistance from the Office of the United Nations High Commissioner for Human Rights (OHCHR) in collaboration with the Division for the Advancement of Women (DAW), and from relevant United Nations agencies.

The OHCHR cannot provide technical assistance to a State outside its internationally recognized borders, especially in the absence of the express will of the people of that territory. Consequently, the reports submitted by the Kingdom of Morocco can no longer include Western Sahara as part of the Moroccan national territory.

THE FORM OF REPORTS

220. Article 19 of the Harmonized Guidelines

*Information which a State considers relevant to assisting the treaty bodies in understanding the situation in **the country** should be presented in a **concise and structured way**.*

221. Little help is given to the treaty bodies in understanding a particular situation when a Non-Self-Governing Territory is stripped of its status and described as an integral part of the national territory of a State Party.

222. Article 23, *in fine*, of the Harmonized Guidelines.

Reports which, upon receipt, are found to be manifestly incomplete or require significant editing may be returned to the State for modification before being officially accepted by the Secretary-General.

Reports submitted by the Kingdom of Morocco including Western Sahara as if it were part of the national territory deserve consideration as incomplete reports (excessive and false) and should therefore be returned.

THE CONTENT OF REPORTS

General

223. Article 24, *in fine*, of the Harmonized Guidelines.

*Reports should contain information sufficient to provide **each respective treaty body with a comprehensive understanding of the implementation of the relevant treaty by the State**.*

The Kingdom of Morocco presents its reports including Western Sahara as if it were its national territory. It is therefore exceedingly difficult to say that the treaty bodies are provided with a ***comprehensive understanding*** of the implementation of the relevant treaty.

The absence of any reference to the situation of occupation prevents the treaty bodies from being provided with a ***comprehensive understanding*** of the implementation of the relevant treaties and deprives them of the possibility of urging the State party to apply and implement international humanitarian law.

224. Article 25, *in fine*, of the Harmonized Guidelines.

Reports should indicate how those legal instruments are reflected in the actual political, economic, social, and cultural realities and general conditions existing in the country.

Accepting or examining a report that indicates how the legal instruments of a given State are reflected in the economic, political, social, and cultural reality of a

foreign territory is synonymous with accepting or examining that territory within the national scope of that State, contrary to the provisions of Resolution 2625 (XXV).

225. Article 26 of the Harmonized Guidelines.

Reports should provide relevant statistical data, disaggregated by sex, age, and population groups, which may be presented together in tables annexed to the report.

Data are required to be disaggregated by sex, age, and population groups. But it is understood to be the national population of the State. When it is a territory where no sovereignty is recognized, the data of this territory cannot be part of the national report, at the risk of infringing the international legal status of the territory.

226. Article 30.c of the Harmonized Guidelines.

Each treaty body considers the State Party's report on the treaty the implementation of which it monitors, consisting of ***the common core document and the treaty-specific document****, according to its own procedures.*

In considering both the Common Core Document and the treaty-specific report, the treaty bodies should ensure that the international legal status of Western Sahara is scrupulously respected. When the report of the Kingdom of Morocco states that it shares its southern border with Mauritania, this statement is not in accordance with international law, apart from being a statement that the Mauritanian State itself rejects. In other words, it is a statement that creates confusion and makes it difficult for treaty body members to understand the situation.

FIRST PART OF REPORTS: THE COMMON CORE DOCUMENT

General information on the reporting State

227. Article 32 of the Harmonized Guidelines.

This section should present general factual and statistical information relevant to ***assisting the committees in understanding the political, legal, social, economic and cultural context*** *in which human rights are implemented in the State concerned.*

An interesting and important issue is the understanding of the political, legal, social, and economic context in which human rights must be implemented. And yet, it is obvious that the reports submitted by the Kingdom of Morocco do not in any way meet these demands.

Preparing and submitting a report in which the situation of Western Sahara is diluted within the situation of the Kingdom of Morocco to achieve the appearance of a homogeneous situation of a unitary state instead of presenting a separate report attempts against the intended purpose of allowing the committees to understand the political, legal, social and economic context.

228. Article 34 of the Harmonized Guidelines.

States ***should*** *provide* ***accurate information*** *about the main demographic and ethnic characteristics* ***of the country*** *and* ***its population****, taking into account the list of indicators contained in the section "Demographic indicators" in Appendix 3.*

Appendix 3

INDICATORS FOR ASSESSING THE IMPLEMENTATION OF HUMAN RIGHTS

Demographic indicators

Social, economic, and cultural indicators

Indicators on the political system

Indicators on crime and the administration of justice

The United Nations Agencies, such as WHO, FAO, UNDP, etc., and also other Agencies such as the World Bank, etc., work with surface and population data of Morocco different from those presented by Morocco in its Common Core Document. In such a situation one cannot speak of ***accurate information***.

Furthermore, including the Human Rights Compliance Indicators (Appendix 3) for Western Sahara within those of the Kingdom of Morocco, as if they were part of its national scope, only adds more inaccuracy and confusion to the treaty bodies.

229. Article 35 of the Harmonized Guidelines.

*States **should** provide **accurate information** on the standard of living of the different segments of the population, taking into account the list of indicators contained in the section "Social, Economic and Cultural Indicators" in Appendix 3.*

The same arguments as in the previous paragraph should be stated.

B. Constitutional, political and legal structure of the State

230. Article 36 of the Harmonized Guidelines.

*States **should** provide a description of the **constitutional structure and the political and legal framework of the State, including the type of government, the electoral system, and the organization of the executive, legislative and judicial organs**. States are also encouraged to provide information about any systems of customary or religious law that may exist in the State.*

If States are encouraged to provide information on customary or religious law systems that may exist in the State, it is *a fortiori* understood that, in the case of Non-Self-Governing Territories, the information provided must be done in a different and separate manner.

231. Article 37 of the Harmonized Guidelines.

*States **should** provide information on the principal system through which **non-governmental organizations are recognized as such, including through registration** where registration laws and procedures are in place, granting of non-profit status for tax purposes, or other comparable means.*

NGOs in a Non-Self-Governing Territory cannot be subject to the same national legislation of the occupying Power applicable in the rest of that Power's territory, since such subjection would mean the breakdown of the distinct and separate legal status of the Territory. Such subjection simply deprives them of the rights that Chapter XI of the Charter of the United Nations and Resolution 1514 recognize for the peoples of those Territories.

In this case, the legislation of the occupying Power establishes as a red line, for the creation of associations, what they call the "territorial integrity of the Kingdom." Consequently, if NGOs in the Non-Self-Governing Territory are forced to respect these red lines, it would be like forcing NGOs in South Africa in the 1960s and 1970s to respect the rules decreed by the Apartheid regime.

232. Article 38 of the Harmonized Guidelines.

States should provide information on the administration of justice. They should include accurate information on crime figures, including inter alia, information indicating the profile of perpetrators and victims of crime and sentences passed and carried out.

In October 2010, some 30,000 Saharawis camped out in the outskirts of Laayoune, demanding self-determination, and independence. And, in November, Morocco decided to attack the Gdeim Izik camp. A clash between an Attacking Force and an Attacked Force ensued and, with Morocco blocking access to the Territory as witnessed by HRW and IA reports, the only information available was that provided by the occupying Power itself. And, according to the version given by said Power, the result of those confrontations was eleven deaths of the Attacking Force and two victims of the Attacked Force. These figures are certainly not logical.

Afterward, the occupying Power moves the alleged perpetrators thousands of miles out of the occupied territory to the capital of the Kingdom. There, it imprisons them for more than two years, then tries them, first before a Court Martial and then before a Civil Court, and sentences them, in June 2017, to life imprisonment, thirty years, twenty-five years and other penalties. They are still serving these sentences within the

territory of the occupying Power and thousands of kilometers from the occupied Territory.

Morocco, however, is a party to the 1949 Geneva Conventions and adhered to the 1977 Additional Protocol I on 3 June 2011. However, the treaty bodies have not considered the requirements of the Fourth Geneva Convention and its Additional Protocol I when considering the Kingdom of Morocco.

CONCLUSIONS AND RECOMMENDATIONS

233. The question must be asked why the CCPR and CESCR Committees, when considering the Kingdom of Morocco, demand the implementation of the right to self-determination of the Saharawi people. Do the Saharawi people constitute a national, ethnic, or religious minority within the Kingdom of Morocco? Are the Saharawi people an indigenous people within Morocco?

234. If the demand for the implementation of the right of self-determination of the Saharawi people derives from the fact that we are dealing with a people of a Non-Self-Governing Territory, these Committees must demand, above all, that the reports submitted by the State Party be in accordance with their legal status in the Territory, respectful of international law and respectful of the rights and legitimate interests of the people of the Non-Self-Governing Territory.

235. The way the Kingdom of Morocco submits its reports cannot include the Non-Self-Governing Territory of Western Sahara, where it has no sovereignty, as if such territory were an integral part of that State. This form of presentation of the national report has the following implications:

a. It violates the International Legal Statute of the Territory, defined by international law, common practice of States and the jurisprudence of the courts;
b. It violates Article 1 of the Charter of the United Nations by treating a State differently from other States;
c. It does not observe the Harmonized Guidelines;
d. Far from helping the Committees understand the political, social and economic context of the State, it confuses them because it conveys distorted information.
e. It misrepresents the reality of the Saharawi people.
f. Above all, it is manifestly contrary to the interests and rights of the people of the Non-Self-Governing Territory, described in the Charter of the United Nations as a “sacred trust.”

RECOMMENDATION

236. Not to accept or consider any specific report or Common Core Document prepared by a State Party which includes the Non-Self-Governing Territory of Western Sahara as part of the national territory of that State Party. And require the submission of a specific or separate report for that Non-Self-Governing Territory.

Haddamin Moulud Said
Geneva, 31 August 2020