

**SUBMISSIONS TO THE UNITED NATIONS GENERAL ASSEMBLY
SPECIAL POLITICAL AND DECOLONIZATION COMMITTEE (FOURTH COMMITTEE)
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**THE QUESTION OF WESTERN SAHARA
AND THE NATURAL RESOURCES OF THE TERRITORY**

***Professor Jeffrey Smith*
Ottawa, Canada
Western Sahara Resource Watch**

YOUR EXCELLENCIES, I have the privilege to appear before you today. We in the non-governmental organization Western Sahara Resource Watch are grateful for the opportunity to speak and that you are once again considering the question of Western Sahara.

I wish to address the matter of natural resources. Outside of the Frente POLISARIO and the government of the Saharawi Arab Democratic Republic, it is Western Sahara Resource Watch which has the greatest appreciation of the problem of the taking of natural resources from occupied Western Sahara. My goal is to leave you with a few recommendations to help in your assessment of how the Saharawi people can realize their right to self-determination.

There are four natural resources in Western Sahara that are of concern. The occasional taking of fine sand for tourist beaches in the Canary Islands and petroleum exploration, within the territory and its continental shelf, are relatively unimportant. It is the offshore fishery and the mining of phosphate mineral rock at Bu Craa which contribute to the continuing occupation of Western Sahara.

The taking of the Saharan fishery under a European Union-Morocco agreement, the 2007 *Fisheries Partnership Agreement*, and by a 2010 Morocco-Russia treaty, earns Morocco about €50 million annually.

The export of phosphate from occupied Western Sahara is the greater economic prize. A production of 3 million tonnes results in a current gross annual revenue of more than €400 million. In contrast, Morocco is said to have spent \$900 million (€600 million) over the five years from 2004 through 2009, and 20 billion Dirhams since 1975 as it was reported to you yesterday, for economic development in occupied Western Sahara.

In the more than 35 years since Western Sahara was occupied and in the two decades since a ceasefire premised on the holding of a self-determination referendum - a right upheld most recently last year by the International Court of Justice in its Kosovo advisory opinion - some things have become obvious. It is obvious that the taking of fish and phosphate from Western Sahara continues without interruption. And it is obvious that such taking does not benefit the people of the territory - the original, rightful inhabitants of Western Sahara - the Saharawi people.

How can it, with half those people in refugee camps on the other side of Morocco's sand wall that divides the territory?

The evidence is clear that, far from any benefit, the taking of resources works against a just, peaceful and legally required resolution of the Saharawi people's right to self-determination. The trade in the resources legitimizes Morocco's occupation, for example through the EU-Morocco *Fisheries Partnership Agreement*. The trade enriches Morocco, allowing its occupation to be financed. Perhaps most seriously, the trade deprives the Saharawi people of the future benefit of the resources.

Morocco is the party primarily responsible, and I urge on you a close consideration of that responsibility.

There are two areas of law which apply to Morocco's responsibility – more accurately liability – for the taking of Western Sahara's resources. The first is the much quoted and uncontroversial right of non-self-governing peoples to permanent sovereignty over their natural resources. The United Nations, including through Resolution 1803 (XVII), has said as much. But the law is violated in the case of Western Sahara, for the Saharawi people continue to assert that they do not consent and do not benefit from the taking of their resources.

The second area of law we have been reluctant to contemplate. It is international humanitarian law – the law applicable to peoples under occupation. It will interest you to know that the occupying state accepts this law, Morocco having acceded to the *Fourth Geneva Convention* 65 years ago. We know that this second area of law, by

operation of international criminal law, prohibits the taking of natural resources from territories under occupation. The war crime of pillage, including the crime of lending support to it, is well defined in the Statute of the International Criminal Court, the cases of the UN tribunals for Rwanda and Yugoslavia, and for the General Assembly in particular by the International Court of Justice's 2004 Palestine Wall advisory opinion. It is doubtful that a people under occupation as a matter of international criminal law can properly consent to the taking of their natural resources.

What this all means is that international law applies clearly to the question of natural resources in Western Sahara. It absolutely prohibits the taking of those resources without an obvious consent of the Saharawi people. That consent is not forthcoming.

There are some imperatives for the United Nations which result. They are not comfortable or easy given the involvement of member states. The first is necessarily a recognition of the formal complicity of the European Union and Russia concluding treaties to fish in Saharan waters. The second is the universal or *erga omnes* obligation on all member states to act positively to ensure self-determination for the people of Western Sahara and so to refrain from contributing to the taking of the territory's resources. The United Nations General Assembly acted decisively on the same issue when it received the International Court of Justice's Palestine Wall advisory opinion. It can do so again for Western Sahara with your urging.

And so the Committee need only undertake a few things to resolve the situation and therefore ensure the Saharawi people's right to self-determination. I recommend the following:

- (1) the Committee should, on the evidence, have careful regard for the dynamic of the illegal removal of natural resources from occupied Western Sahara and how such taking contributes to securing Morocco's presence in the territory. Credible evidence is available for your assessment; and
- (2) consider the precedent of the United Nations establishing a Council for Namibia, and determining how such a Council would govern for and legislate in the case of occupied Western Sahara, if not generally, then in that which impedes self-determination; the taking of the Saharawi people's natural resources.

I will be pleased to answer your questions.

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