CURRENT AFRICAN ISSUES NO. 33

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THE WESTERN SAHARA CONFLICT
The Role of Natural Resources in Decolonization

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NORDISKA AFRIKAINSTITUTET, UPPSALA 2006

Indexing terms

Western Sahara
Natural resources
Resources exploitation
Conflicts
Decolonization
Colonialism

The opinions expressed in this volume are those of the authors and do not necessarily reflect the views of Nordiska Afrikainstitutet.

Language checking: Elaine Almén

ISSN 0280-2171

ISBN 91-7106-571-7 (print)

ISBN 91-7106-572-5 (electronic)

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Printed in Sweden by Elanders Gotab AB, Stockholm

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Western Sahara

Area	266,000 sq km.
Capital	El-Aaiún/Laayoune in the occupied area (about 200,000 inhabitants).
Climate	Hot, dry desert; rain is rare; cold offshore air currents produce fog and heavy dew.
Terrain	Mostly low, flat desert with large areas of rocky or sandy surfaces rising to small mountains in the south and north-east.
Land boundaries	Algeria 42 km, Mauritania 1,561 km, Morocco 443 km.
Ethnic groups	Original population nomad tribes from Yemen, Berbers and Africans.
Languages	Hassaniya Arabic and some Spanish.
Population	273,000 (est.), 170,000 Saharawis are living in refugee camps close to Tindouf in Algeria.
Religion	Muslim (Sunni).
Natural resources	Phosphates, iron ore, sand and probably oil/gas, uranium, titanium. Extensive fishing along the long Atlantic coast-line.

Western Sahara conflict – Chronology

Compiled by Claes Olsson

Spanish Colonisation

1884	At the Berlin Conference the European powers divide up the African continent. Spain commences its colonisation of the Western Sahara.
1912	Frontiers of the Western Sahara confirmed by France and Spain.
1920s and 1930s	Sahrawi resistance against French army.
1934	Spain and France crush Sahrawi fighters who had attacked Spanish positions. Spain took full possession of the territory.
1947	Phosphates discovered in the desert by a Spanish geologist.

Deteriorating colonisation

1956–58	Battles between Sahrawi resistance and Spanish troops.
1956	Morocco independent.
1958	Military Treaty between Spain and France (with approval of the Moroccan regime):
	Saguia el Hamra and Rio de Oro, under authority of Spain, Tarafaya to Morocco.
1960	Mauritania independent.
1960	UN Declaration 1514 (XV)
	(Declaration on the Granting of Independence to Colonial Countries and Peoples).
1962	Algeria independent.
1963	Western Sahara included in the UN list of countries to be decolonized (declaration 1966 calling for self-determination to be exercised through referendum).

Preparations for a Spanish withdrawal

1967–73	Formation of new Sahrawi resistance.
1973	Polisario Front founded.
1973	Certain efforts from Spanish side to increase participation of the local Djemaa in the territory's administration.
1973	Spain begins to export phosphates.
1974/75	Spanish census and a plan to hold a referendum.

Spanish withdrawal

1974 (July) Algeria's first support to Polisario.

1974 (August) Morocco announces that it does not accept a referendum where independence is included as an option.

1975 (May) UN fact finding mission visits Western Sahara.

1975 (October) International Court of Justice advisory decision: WS has right to self-determination and referendum (UN/GA).

1975 (6 November) Moroccan Green March.

1975 (14 November) The Madrid Agreement, Spain cedes the Western Sahara to Morocco and Mauritania.

1975 (November) Moroccan and Mauritanian troops invade the Western Sahara.

1976 (26 February) Spain officially cedes the Western Sahara.

1976 (27 February) The Sahara Arab Democratic Republic (SADR) is proclaimed by Polisario.

1976–77 Guerrilla war on two fronts.

Refugee camps at Tindouf (in Algeria).

1978 Coup d'état in Mauritania followed by cease fire between Mauritania and Polisario.

The war between Morocco and Polisario continues.

1979 The Algiers agreement: Mauritania withdraws its claim on Western Sahara and recognizes the right of Western Sahara to self-determination.

1981–97 Moroccan fortified defence wall.

1984 SADR becomes a member of the OAU, Morocco abandons the organisation.

UN/OAU Peace Plan, preparations for a referendum

1988 The UN/OAU proposal for a ceasefire to be followed by a referendum on self-determination accepted by Morocco and Polisario. The Spanish census of the population in the territory in 1974 will be the foundation of the referendum to be prepared.

1989 Polisario meets King Hassan II of Morocco.

1991 The UN Mission MINURSO is established (UN Mission for the Referendum in Western Sahara). MINURSO will oversee the implementation of the peace plan. The ceasefire begins.

1992 The referendum delayed (first time).

1995 The identification process ceases because Morocco and Polisario have totally different approaches to further identification.

1997 James Baker, former US Minister of Foreign Affairs, is appointed as UN Secretary General's personal envoy.

1997	The Houston Accords on the modalities of a referendum are signed by Morocco and Polisario.
1998	Referendum suspended again.
1999	The process of voter identification continues. King Hassan II dies.
2000	A provisional list of 86,000 voters is published. Morocco presents another 130,000 appeals, which throws the process into further crisis.
2001	James Baker presents Framework Agreement (Baker I).
	A period of autonomy prior to the referendum, all settlers in the territory entitled to vote. The Framework Agreement was rejected by Polisario, Morocco and the UN/SC.
2001	Morocco issues reconnaissance licences to the two oil companies, Total and Kerr McGee.
2002	King Mohamed VI of Morocco declares the referendum process as obsolete.
2003	Second version of the Framework Agreement (Baker II).
	A modified version of the former Framework Agreement from 2001 which gives the Western Saharians more influence during the period of autonomy which is stipulated as 5–6 years followed by a referendum.
	The Framework Agreement is accepted by Polisario as a basis for negotiations but rejected by Morocco. Morocco does not accept independence as an option.
2005	The Dutch Ambassador Peter Van Walsum replaces James Baker as the Secretary General's personal envoy for the Western Sahara.

Introduction

The Nordic Africa Institute arranged jointly with the Swedish Development Forum (FUF) and the Global Publications Foundation (Stiftelsen Global Kunskap) a seminar on "Western Saharan Natural Resources: Burden or Opportunity?" as part of our effort to shed light on little known or forgotten areas and conflicts in Africa. The question of self-determination has been central to the Western Sahara ever since the United Nations passed its Resolution on the territory in December 1966. In defiance of this and later Resolutions and pressures, not least from the African continent, Morocco invaded the territory and has governed it ever since.

In analyzing why this territory, mainly covered by desert and only sparsely populated, has engaged so many local and international governments and people, this book based on the contributions made at the seminar, focuses on the resource endowment of the territory and its impact on the international community in general and Morocco in particular. There is no doubt that the question of the natural resources of Western Sahara such as fish, oil and phosphates has been the main reason for the interest in the area in question. As in so many places all over the globe the exploitation of natural resources including the job opportunities it creates for the occupiers makes states and people react selfishly and in conflict with international law.

This short report first presents a summary of the Western Sahara situation by Pedro Pinte Leite, specialist in international law in the Netherlands. In doing this he makes comparisons with the similar case of Eastern Timor thereby making the plight of West Sahara more general. Toby Shelly, a British journalist and author with many years experience from the area, paints an up-to-date picture of the situation with regard to natural resources in Western Sahara, and the way in which exploitation is taking place at present. Former UN Under-Secretary-General for Legal Affairs, the Legal Counsel, Hans Corell presents in his contribution the UN's legal opinion on exploitation of the natural resources of a non-self-governing territory from 2002, which he himself was instrumental in preparing. It emphasizes that such exploitation is legal but should be to the benefit of the people of the territory. It is also this latter conclusion which the contribution by Magnus Schöldtz and Pål Wrange from the Swedish Foreign Ministry makes when they present the Swedish Foreign Policy on the Western Sahara Conflict. A message by Karin Scheele, President of the Intergroup on Western Sahara in the European Parliament, is also included.

For all of us who hope to see Africa prosper and build sustainable societies free of conflicts and strife this ruling of the UN should form the first stepping-stone towards a future enduring peace in the region which allows for self-determination for the whole of Western Sahara. In the long run such a solution is best for all parties, for the Sahrawis as well as for Morocco.

Uppsala, 6 February 2006
Lennart Wohlgemuth
Former Director of the Nordic Africa Institute

International legality versus *realpolitik*

The cases of Western Sahara and East Timor

Pedro Pinto Leite

The eternal struggle between international legality and realpolitik has produced some interesting cases in the last forty years. This paper will focus on two of these cases, a general view of the Western Sahara problem and a comparison with the similar question of East Timor.

For many years Western Sahara and East Timor were side by side on the UN list of Non-Self-Governing Territories, waiting for the moment to exercise their right to self-determination. In August 1999 the East Timorese were finally allowed to choose their future status through a referendum. They chose independence and East Timor has since 2002 been the youngest member of the United Nations. The Saharawis, who at an earlier stage had been promised a similar referendum by the international community, are still waiting. They hope that the similarities with the question of East Timor will inevitably lead to the same solution, but when looking at the way the problem of West Papua was handled by the United Nations they have also good reasons to be apprehensive.

West Papua is indeed a case where self-determination was blatantly denied. Because the West Papuans were Melanesian, thus ethnically and culturally different from the Indonesians, the Dutch at first resisted the pressure to surrender West Papua to Jakarta and started a self-determination process there. However the Indonesian leaders did not give up their claim to West Papua and under strong pressure from the United States – afraid of a communist take over in Indonesia – the Netherlands was obliged to sign the 1962 New York Agreement, by which the administration of West Papua would be taken over by the UN and later by Indonesia. The Papuans were not a party to the Agreement. They were not even consulted. The act of self-determination "according to international practice"[1] envisaged by the Agreement never took place. Instead, in 1969 a so-called Act of Free Choice was orchestrated by Indonesia: only 1,025 selected Papuans (out of a population of 700,000) were allowed to vote. United Nations observers were turned away from the voting sites. No wonder that the Papuans dubbed the Act of Free Choice the Act of NO Choice. Lamentably, the UN General Assembly regarded the question as settled and removed West Papua from the UN agenda.

On the contrary, the question of West Papua seems all but settled. The fact that the Papuans did not give up their struggle for self-determination and that the Indonesian armed forces and their militias committed gross human rights violations in the territory (an estimated 100,000 Papuans were killed – 15% of the population) gave rise to a strong campaign for a review of the UN's conduct in relation to the Act. Encouraged by statements by Mr. Narasimhan, a former Under-Secretary-General and the most senior UN person involved in the Act of Free Choice ("It was just a whitewash")[2], by a British Minister (the Papuans were "largely coerced into declaring for inclusion in Indonesia")[3] and by an official historical research by Professor Drooglever recently published in the Netherlands ("The Act of Free Choice ended up as a sham")[4], the campaign counts on the support of many NGOs, the Irish Parliament and MPs of several countries, including the United States, Nobel laureates like Archbishop Desmond Tutu and other religious leaders like the Bishop of Oxford. This reversal in the question of West Papua is, needless to say, of great importance for the cause of Western Sahara.

1. Art 18 of the Agreement.

2. Associated Press, 22 November 2001.

3. Minister of State, Foreign and Commonwealth Office, Baroness Symons of Vernham Dean answering a question put by the Bishop of Oxford on whether the Government would support the call for the United Nations Secretary-General to instigate a review of the United Nations' conduct in relation to the Act of Free Choice in West Papua in1969 (Lords Hansard, 1 December 2004, column 1084).

4. P. J. Drooglever, *Een Daad van Vrije Keuze. De Papoea's van westelijk Nieuw-Guinea en de grenzen van het zelfbeschikkingsrecht* (Amsterdam, Uitgeverij Boom, 2005).

Western Sahara and East Timor: Like two drops of water

Both Western Sahara and East Timor are the former colonies of Western nations (Spain and Portugal respectively) and, in the mid-1970s following the withdrawal of the colonizing powers, they were occupied and annexed by neighboring countries: Indonesia in the case of East Timor and Morocco in respect of the former Spanish Sahara. Significantly, both aggressors are Third World countries and themselves former Western colonies that have received support (diplomatic, material, financial and military) from Western nations (particularly the USA) to maintain their illegal occupations. Both East Timor and Western Sahara have suffered various forms of human rights abuses, including torture, disappearances, detention without legal redress, and extra-judicial killings. Indonesia and Morocco have repeatedly been condemned by international human rights bodies and have acted in breach of UN Resolutions 1514 (XV) and 1541 (XV), which make freely expressed self-determination an inalienable right. Portugal has been the more proactive of the two former colonizing powers in supporting efforts toward self-determination in its former colony, as for example when it initiated proceedings against Australia before the ICJ concerning the 1989 Timor Gap Treaty.

The false argument of territorial integrity

Located in Northern Africa, bordering the North Atlantic Ocean between Morocco and Mauritania, Western Sahara has an area of 266,000 square kilometers (the same area as New Zealand or three-fifths of the area of Sweden) and has a long coast, of more than 1,000 kilometers. According to the Spanish census of 1974, there were about 74,000 inhabitants in Western Sahara. At the time most of them were nomads: tribes linked by the same language – Hassania, related to Arabic – and the same culture.

The Spanish colonial regime in Western Sahara was established at the end of the 19th century. In the 1960s Spain came under strong international pressure to decolonize the territory. Like many anti-colonial movements in Africa, the Popular Front for the Liberation of Saguia el Hamra and Rio de Oro (Polisario) was established in 1973 as a guerrilla movement to liberate its region from the Spanish colonizing power. Four months after the Carnation Revolution in Lisbon in April 1974, which would heavily influence events in East Timor, Spain announced that it would hold a referendum on self-determination in Spanish Sahara, to be monitored by the UN. King Hassan II of Morocco, seizing the opportunity presented by Spanish internal political difficulties, prevailed on the UN to delay the referendum to consider Moroccan and Mauritanian territorial claims over Western Sahara. In December 1974, the UN General Assembly passed Resolution 3292 (XXIX) requesting the International Court of Justice in The Hague to give an advisory opinion on the case of Western Sahara. Morocco and Mauritania based their claims over the territory of Western Sahara on the principle of territorial integrity. The ICJ could not ignore some factual evidence indicating the existence of cultural, religious and political ties between Morocco or Mauritania and the nomadic tribes occupying Western Sahara in the period preceding Spanish colonization, but it concluded 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 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."[5]

In the same way the Suharto regime started a campaign about the historical and cultural bonds between Indonesia and East Timor and used the same principle of territorial integrity to justify the annexation. The alleged bonds, however, were nothing but a fabrication of history. Timor had never been subservient to one of the empires, reigns and sultanates, which developed from some of the islands that nowadays form a part of Indonesia. And in the East Timor case (Portugal vs. Australia), twenty years later, the Court reminded that the UN General Assembly and the Security Council had reaffirmed the inalienable right of the people of East Timor to self-determination in accordance with General Assembly resolution 1514 (XV).[6]

5. International Court of Justice, *Western Sahara Advisory Opinion*, ICJ Reports, 1975, p.68, para. 162.
6. International Court of Justice, *Case concerning East Timor (Portugal v. Australia), Judgement*, ICJ Reports, 1975, p.103, para. 31.

Invasion, occupation and annexation

In November 1975, a month after the ICJ published its advisory opinion, which upheld the Sahrawis' right to self-determination, King Hassan mobilized 350,000 Moroccans across the border into Sahara in the so-called 'Green March'. Hassan intended this mass mobilization southward as a show of defiance against the ICJ's decision and evidence of Moroccan popular support for the annexation of Spanish Sahara. The UN Security Council, convened at the request of Spain, urged Morocco to withdraw from Sahara, but no effective action was sanctioned when its resolutions[7] were ignored. As Spain was determining a new political course in 1975, following 36 years of fascism, it was in no position to militarily challenge the territorial ambitions of Morocco. The territory was ceded to both Morocco and Mauritania with the signing of a partition agreement in Madrid on 14 November 1975. Under the terms of the tripartite agreement, Spain withdrew from Sahara in 1976 in return for 35 per cent of the phosphate mines and fishing rights in Saharan waters for ten years[8], thereby reneging on its pledge to oversee a referendum on self-determination in Sahara and ensure a peaceful transferal of power. Neither the UN nor the Organization of African Unity challenged the legality of the tripartite agreement.

The majority of Saharawis fled the Moroccan occupation forces and were rallied by the Polisario leadership in refugee camps in Tindouf, in southwest Algeria, where they still remain. With a long tradition of supporting African liberation movements, the Algerian government was the strongest regional ally of the Saharawis. Polisario was provided with weaponry, communications and refugee facilities and, importantly, Moroccan forces, fearful of provoking the direct involvement of Algeria in the conflict, did not attack the Tindouf refugee camps. Between 1975 and 1991, the Moroccan occupation forces increased from 56,000 to 250,000 and its air force used napalm and phosphorus to displace any civilians who had not already fled to the camps in Tindouf[9]. Although the Polisario guerrillas were heavily outnumbered, they sustained unconventional desert warfare, which necessitated an increased commitment to the conflict of resources from Morocco and Mauritania. In 1978 Mauritania, on the verge of bankruptcy, withdrew its troops from the territory, signed a peace deal with Polisario and renounced all its claims. Morocco moved to occupy that part of the territory. The withdrawal of Mauritania and the Saharawis' successful containment tactics prompted Morocco to construct a 2250-km-long defence wall of sand and stone, protected by minefields and advanced electronic equipment supplied by the USA and France.

The independence movement in East Timor evolved at a later stage than those organized in other Portuguese colonies. In the mid-1970s, however, a clandestine liberation movement opposed to colonial rule attracted widespread support within Timorese society and attempted to seize the opportunity for independence presented by the Carnation Revolution of April 1974. The collapse of the colonial regime in Lisbon transformed the political scene in Timor, and within a month of the revolution two main political groups had emerged. The Timorese Social Democratic Association (ASDT), which later evolved into the Revolutionary Front for the Independence of East Timor (Fretilin) supported self-determination for the Timorese, whilst the Timor Democratic Union (UDT) initially favoured a continued association with Portugal. A third political group, the Popular Democratic Association of Timor (Apodeti), defended integration with Indonesia. A small party, Apodeti was largely a construction of the Indonesian government. The new Portuguese government promised independence for East Timor, but in the chaotic course of events, which followed the revolution, the small overseas province of Timor was not one of Lisbon's political priorities. When some of the UDT leaders organized a coup in August 1974, at the prompting of the Indonesian military, the Portuguese authorities left Dili, the capital, for the island of Atauro, and a resulting civil war claimed some 1500 lives. By November 1975, Fretilin had won the civil war and also secured the administration of the territory as the Portuguese refused to return to the main island. On 7 December Indonesia invaded East Timor and officially annexed it some months later.

The invasion, occupation and annexation of Western Sahara and East Timor not only formed an obvious violation of the Charter of the United Nations, but also an international crime against peace. Moreover, they formed an equally clear violation of

7. For example Resolution 380 (1975) of 6 November 1975.

8. See, for example, Thomas M. Franck and P. Hoffman. *The Right of Self-Determination in Very Small Places*, New York University Journal of International Law and Politics, vol. 8, 1975/1976, p.341, and John Mercer, *Spanish Sahara*, Allen & Unwin Ltd, London, 1976, p.10.

9. Jeremy Harding, *Small Wars, Small Mercies*, Viking, London, 1994, pp.117–118.

the right of the Saharawis and East Timorese to self-determination and independence. As Hector Espiell rightly concludes in his study on self-determination:

> "[...] foreign occupation of a territory – an act condemned by modern international law and incapable of producing valid legal effects or of affecting the right to self-determination of the peoples whose territory has been occupied – constitutes an absolute violation of the right to self-determination."[10]

In addition, the Moroccan and Indonesian governments committed an act of disobedience against the United Nations by maintaining the occupation of the territory even after being repeatedly summoned by the Security Council to withdraw their troops.

Human rights abuses

Amnesty International has been consistently critical of Moroccan human rights abuses, which pre-date the conflict in Western Sahara but have intensified since 1975. An Amnesty report in April 1996 stated that:

> "The pattern of "disappearance" of known or suspected political opponents by the Moroccan authorities dates back to the 1960s ... [and] "disappearances" of Sahrawis began to occur at the end of 1975 and continued until the late 1980s."[11]

Amnesty also condemned the fact that the Moroccan authorities refuse to investigate 'disappearances', provide information on detainees or compensate released ex-detainees. The human rights group described in this way the treatment of some of the 'disappeared':

> "After being arrested by the Moroccan army and other security forces the detainees were taken to secret detention centres in Morocco and Western Sahara, where torture and ill-treatment were routine, especially during interrogation. With few exceptions, those detained were never charged with any offence, brought to trial, or put through any legal process. Some were released after weeks and months in secret detention, and hundreds of others simply 'disappeared'."[12]

Amnesty has also raised concerns that human rights violations have continued to be perpetrated by Morocco despite the presence since 1991 of the United Nations Mission for the Referendum in Western Sahara (MINURSO). Amnesty's criticisms of MINURSO are based on the fact that the mission does not have a comprehensive provision for monitoring the human rights situation in Western Sahara, and also that the limited human rights safeguards contained in MINURSO's mandate are not respected. The lack of an effective international monitoring mission in Western Sahara has enabled the Moroccan military to act with impunity in the region.

Sharing an island with the aggressor state and therefore without a supportive neighbor, East Timor was in an even more unsafe position. If, in addition to verbal condemnation of the Indonesian acts and the acknowledging of the right to self-determination of the East Timorese people, the United Nations could also have forced Jakarta to immediately withdraw its troops from the territory, the damage would have been limited. Because of the strong resistance of the people of East Timor towards the occupation, the Indonesian government, knowing it was backed up both militarily, economically and diplomatically by major countries, trod the same path it had done before, within its own borders, without any scruples, i.e. the physical extermination of its opponents. Amnesty International and other neutral observers succeeded in getting a rough idea of the number of deaths with the help of estimations made by clergymen, by analyzing contradicting figures, published by the Indonesian authorities themselves, and by the accounts of the people of East Timor who had succeeded in escaping from the hermetic isolation to which the island was condemned. They came to the conclusion that up to 1980 that number was definitely more than 200,000, a third of the original size of the population. They also proved that the great majority of those deaths were due to violence carried out by the Indonesian army of occupation.[13]

Thousands of men, women and children were killed in cold blood from the first day of the invasion. Massacres like those on Uadaboro mountain and in Taipo (November 1978, ca. 800 killed), in Lacluta (September 1981, ca. 500 killed), in Kraras (August 1983, ca. 700 killed) caused more victims than the infamous massacre of 12 November 1991 at the cemetery of Santa Cruz in Dili. But this was filmed by a courageous cameraman, Max Stahl, and

10. Hector Gros Espiell, *The Right to Self-Determination: Implementation of United Nations Resolutions*, United Nations, New York, 1980, p.6.

11. *Human rights violations in Western Sahara*, Amnesty International report, MDE, 29 April 1996, p.3.

12. *Ibid*., p.4.

13. See, for example, Amnesty International, *East Timor. Violations of Human Rights, Extarajudicial Executions, 'Disappearances', Torture and Political Imprisonment*, Amnesty International Publications, London, 1985, p.6.

his images changed the world's perception of East Timor. To the victims of these mass slaughters one has to add the casualties of the random bombardments which made hundreds of settlements in East Timor disappear (especially after September 1977) and the number of victims of the successive extra-judicial executions and 'disappearances'.[14]As well as the bullets and the bombs, the aggressor used a far more effective weapon: starvation. By massively bombing the fields, subsequently driving people together into 'resettling areas' that were hardly fit for agriculture, and by strongly restricting the mobility of these people, which made it impossible to farm the land regularly, the Indonesian military created a famine, something which would be repeated several times during the years to come, and caused at least 150.000 deaths.[15] If we also add the forced birth control, for which Indonesia was indicted by, among others, the former bishop of Dili, Msgr. Ximenes Belo[16], we have four of the five acts, which the Genocide Convention gives as examples of that hideous crime.

The aim of the Indonesian government to exterminate the people of East Timor, was also demonstrated as such by its general practice, directed towards the destruction of the people's cultural identity. The destruction of their social structures and production patterns, the Javanization of the territory by means of the transmigration policy, the ban on education in their own language, the suppression of the animistic religion, the whole cultural genocide, is at the same time proof and an extension of the actual genocide of these people.[17]

States or non-self-governing territories?

In February 1976 the Polisario Front proclaimed a government-in-exile of the Saharawi Arab Democratic Republic (SADR). In June 2005 Morocco's foreign minister, reacting furiously to the decision of Kenya – following that of South Africa in the same year – to establish formal diplomatic ties with the SADR, named it "a virtual entity without any attribute of a sovereign state".[18] But the fact is that the majority of the Saharawi population lives in the camps of Tindouf under its own administration, that a part of Western Sahara is already a liberated zone and that the Saharawi Republic conducts international relations with more than 70 states. In other words, that it has all the attributes of a sovereign state, which fulfils the legal criteria for statehood provided by the Montevideo Convention: a permanent population, a clearly defined territory, a government and the capacity to enter into relations with other states. True, the UN still considers the Western Sahara a non-self-governing territory and that is confusing for many people, particularly when they note that the intergovernmental, regional organization OUA (Organization of African Unity) admitted the SADR as a full member in 1984 and that at the launching of the African Union in July 2002 SADR was elected Vice-President of the new organization.

On 27 November 1975, ten days before the invasion, Fretilin established the Democratic Republic of East Timor (DRET). Although recognized as such by only fifteen countries, DRET could also be seen as an independent state at the moment the Indonesian forces invaded its territory, as nowadays recognition is considered as having a declaratory, not a constitutive effect[19]. East Timor also met all the conditions that modern international law demands for the existence of a state. The government's control of all the territory, from September until the invasion, was recognized by many independent observers even if it only lasted three months. That was enough to create statehood and the illegal occupation that followed could not terminate it. Under international law the occupant does not displace the territorial sovereign though the conditions for statehood are affected. But the United Nations however preferred, just as Portugal had done, to continue to consider East Timor as a non-self-governing territory and the Timorese leaders, for strategic reasons, took a step back.

The alleged economic non-viability of Western Sahara and East Timor

Another argument raised by the occupying powers against the self-determination of Western Sahara and

14. *Ibid.*,pp.20-52, 81–87.

15. See, for example, Arnold Kohen and John Taylor, *An Act of Genocide: Indonesian Invasion of East Timor*, TAPOL, London, 1979.

16. *Pastoral Letter on Responsible Parenthood*, of 3 March 1985.

17. See, for example, Prof. Benedict Anderson, *Statement Submitted on East Timor at the Decolonization Committee of the United Nations' General Assembly*, October 1980.

18. Statement reported by the Moroccan news agency MAP, 25 June 2005.

19. Michel Robert, *Analyse Juridique du Problème du Timor Oriental*, Lisbon, June 1981.

East Timor touches the main subject, the question of natural resources. Both Morocco and Indonesia tried to depict the occupied territories as economically unviable: the population of the Western Sahara would be too tiny, the area of East Timor would be too small, both territories would have very few resources.

In line with its anti-colonial attitude the UN has never regarded the criterion of economic non-viability as a hindrance towards independence of any nation. This is evident both from the UN resolutions, which dealt with this criterion in theoretical terms, and from the actual application of them throughout the years. This is illustrated by paragraph 3 of resolution 1514 (XV):

> "Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence."

In any case, East Timor could not be regarded as unviable on the basis of its territorial size. Almost a sixth of existing states have an area smaller than East Timor: the Bahamas, Fiji, Gambia, Jamaica, Lebanon, Qatar, Singapore and Swaziland, to name but a few. There are also several states with a population smaller than that of Western Sahara.

In 1974, the World Bank labelled Western Sahara as the richest territory in the Maghreb region because of its fishing resources and huge phosphate deposits. In addition, it contains potentially large oil reserves. East Timor may in the statistics be one of the poorest countries in the world, but it is nevertheless a rich territory. It is worth mentioning that Australia is making $1.7 million a day from a temporary deal granting access to oilfields that belong to East Timor. The coffee of East Timor is known to be among the best in the world: similarly, thanks to trade monopoly in that coffee, a company controlled by Indonesian generals, called P.T. Denok, also earns many millions of dollars a year.

In conclusion, even supposing one could accept the (colonially coloured) criterion of economic non-viability as an obstacle to the independence of a colonized territory, there are still not sufficient arguments against Western Sahara's independence, since nothing indicates that Western Sahara can be considered as unviable. On the contrary, everything points in the direction that these sources of potential and actual wealth in Western Sahara are among the most important reasons that led to the occupation of the territory.

In October 2003 the Fourth Committee approved a two-part draft resolution by which the General Assembly reaffirmed the inalienable right of the peoples of Non-Self-Governing Territories to self-determination. By the terms of the resolution, the Assembly reaffirmed that, in the process of decolonization, there is no alternative to the principle of self-determination. By a recorded vote of 135 in favour to two against (Israel, United States) with two abstentions (France, United Kingdom), the Committee also approved a draft resolution on economic and other activities that affect the interests of the peoples of the Non-Self-Governing Territories. The Assembly, by the terms of that resolution, reiterated that the damaging exploitation and plundering of the marine and other natural resources of the Territories, in violation of relevant United Nations resolutions, are a threat to the integrity and prosperity of those Territories. It also urged the administering Powers concerned to take effective measures to safeguard the inalienable right of the peoples of the Territories to their natural resources.

Whatever the political manoeuvres of Morocco and some states may be, this is exactly the point they have to understand: there is no alternative to self-determination. The Sahrawis (as the East Timorese have already done) must decide freely on their future status. Another thing the governments of Morocco and France have to understand is that in the meantime they must keep their hands off the natural resources of Western Sahara.

Natural resources and the Western Sahara

Toby Shelley

The exploitation of Western Saharan natural resources has always been an issue in the conflict but recently it has become the focus of much more attention. There are two reasons for this. Firstly, the strategic importance of fisheries and hydrocarbons to the Moroccan economy has increased considerably while that of phosphates has remained more or less constant. Secondly, the issue has become one around which Polisario and its sympathisers are organising, prompted by Morocco's initiation of oil exploration and by the distinct possibility that the European Union will recommence fishing in Saharan waters through an agreement with Rabat.

This paper will focus on the influence of three key natural resources on the conflict. While control of Saharan phosphate reserves may have been a factor in Morocco's determination to seize the Western Sahara, it is control of fish stocks and the hope of finding oil that now dominate the agenda for Moroccan officials for reasons that will be mentioned.

In November 2005 on the beach at Leraa, between the port towns of Boujdour and Dakhla, a collection of perhaps 100 inshore vessels were visible, each one broken in half by the Moroccan authorities for illegal fishing. At one end of the beach was a deserted, roughly built village. Nearby was a newly built fish market – never used. Two kilometres away was a purpose-built new village – uninhabited. An hour's drive down the coast at Ntirifit, was a tent village with several hundred vessels laid up, out of use. Earlier this year, Ntirifit was the scene of a protest by fishermen who tried to stop trucks transporting frozen fish out of Dakhla.

In Dakhla itself, on waste-ground between the port and a shanty town that houses Moroccans imported into the Western Sahara, there were more heaps of broken up boats.

There are a number of fishing communities along the coast of the Western Sahara – the Moroccan authorities have talked of formalising six villages.[1] In Dakhla province alone, a senior official said that about 40,000 people been affected by new restrictions on fishing. Some say there are 120,000 in communities along the coast as a whole. How many there really are probably cannot be known as many live there without authorisation or papers.[2]

Overwhelmingly, these people are Moroccan – people encouraged to settle in the Western Sahara to secure demographic dominance of the territory. With unemployment in the territory acknowledged by the state to run at around 25 per cent[3] and estimated by others to be twice that, and with the government committed to subsidising settlers, the importance of fishing to Rabat's project in the Western Sahara is clear.

But the importance of Saharan waters has also grown for the Moroccan economy as a whole. This is due to several factors. Number one: development of the Moroccan fishing industry as a generator of income and employment. Number two: growing international demand for seafood. Number three: a massive increase in the proportion of the Moroccan catch accounted for by Saharan waters.

From 200,000 tonnes a year in the 1960s, Moroccan landings rose to over 1m tonnes in 2001.[4] The industry employs, directly and indirectly, some 400,000 Moroccans and exports are worth around $1bn a year, 15 per cent of the total.[5] The two most important catches for the Moroccan fleet are low value sardines and high value cephalopods (octopus

1. *Plan de développement integré de la province de Laayoune*, presentation to author by Moroccan officials, February 2002.
2. Discussions with Moroccan officials, Dakhla, November 2005.
3. Ministry of Economic Forecasting and Planning, Rabat, *Morocco in Figures*, published annually.
4. *Rapport sur le secteur des pêches maritimes au Maroc et la réforme fiscale pour la promotion de la croissance et l'aménagement durable*, Hassane el Filali and Hachim Elayoubi, UN Food and Agriculture Organisation, October 2003.
5. *Ibid*.

and squid). According to the UN Food and Agriculture Organisation, over-fishing and shoal migration have reduced the sardine catch in Moroccan-controlled waters by 80 per cent. Only in the southern sector of the Western Sahara do stocks remain healthy. Cephalopods constitute 80–90 per cent of export earnings of the industry and they are found almost exclusively in Saharan waters.[6] Indeed the boats at Leraa were broken up because they were working in a conservation zone for cephalopods.

Much of the state investment in the Western Sahara in recent years has gone to the redevelopment of the ports of Laayoune, Dakhla and Boujdour, reflecting the increasing importance of the fishing industry there to Morocco. By 2007, a staggering 90 per cent of the total Moroccan catch is forecast to be landed within the Southern Development Zone – essentially the historic Western Sahara.[7] Already, Laayoune alone accounts for 40 per cent of the catch.[8]

The benefits of this expansion of fishing by Morocco to the Sahrawis are negligible. A small proportion of the artisanal fishermen are Sahrawi but lack of micro-credit limits the ability of families to purchase boats and equipment. A few Sahrawis find employment in the ports. More important, members of the handful of rich Sahrawi families that work with Morocco are allowed to control some of the fishing licences and to operate freezer units and sardine processing units, enabling them to dispense patronage in the form of jobs and fishing rights.

Attempts to control the depletion of stocks – the cephalopod catch was halved in 2003 – underline the environmental and social structures and tensions of the territory under Moroccan rule. Stock management schemes have been hampered by illegal fishing by small vessels of which there are some 7,000 with licences and probably the same number without.[9] They have also been hampered by the impunity of some larger vessels controlled by influential Moroccans and a handful of Sahrawis. In 2005 there was a protest near Ntirifit, an attempt to prevent trucks exporting fish from Dakhla. Various accounts of the protest exist.[10] For some it was organised by Moroccan fishermen concerned that for political reasons preference in quota allocations would go to larger vessels controlled by Sahrawi notables. For others, it was a protest by Sahrawi nationalists against the plunder of the territory's resources. Either way, it highlights the nationalist optic through which the issue was viewed.

Morocco stands to gain from Saharan fish stocks in another way too. In 2005, the European Commission negotiated a fishing agreement with Morocco.[11] In the past, European vessels fished off the Moroccan and Saharan coasts under agreements that derived from the Madrid Accords[12] under which Spain ceded Western Sahara to Morocco and Mauritania. When Spain joined the EU, its agreement with Rabat was incorporated into EU practice. In fact those earlier arrangements did not specifically refer to the Western Sahara. A few years ago the EU and Morocco failed to agree on the terms under which the agreement would be renewed so this year's negotiations started from scratch. One might have imagined that this would provide an opportunity for the EU to tidy up arrangements, ensuring that legal niceties and political sensitivities were observed such that the Western Sahara was ruled out of the new deal. In fact, quite the opposite happened and the new deal – which awaits ratification in early 2006 – explicitly includes waters controlled by Morocco but not under its recognised sovereignty. If this agreement is ratified in its current state it will constitute backdoor recognition of the status quo in the Western Sahara. There is no doubt that it is being promoted by France – Morocco's primary ally – and Spain, whose fishing industry will most benefit.

The quest for oil in Western Saharan waters has attracted much attention since Morocco announced it had granted reconnaissance licences to Total and Kerr McGee in 2001. Morocco, of course, has no oil of its own – or none discovered to date.[13] That leaves its balance of payments exposed to the most volatile of commodity markets. For the first nine months of 2005, the oil import bill rose 63 per cent, year-on-year, with prices up 43 per cent and volumes up 14 per cent.[14] Even before the price rises of the last three years, oil and oil products accounted for 17 per cent of the import bill.

6. *Ibid.*
7. *Plan de développement intégré de la province de Laayoune*, presentation to author by Moroccan officials, February 2002.
8. *L'Economiste*, 19 December 2001.
9. *LeJournal-Hebdo.com*, Le péché du développement socio-économique, May 2005.
10. Compare for example LeJournal-Hebdo.com (cited above) with Sahara Press Service reports of 10 April 2005.
11. *Europa Press*, 28 July 2005, *L'Economiste*'2 August 2005.
12. The Madrid Accords of November 1975 (also known as the Madrid Agreement).
13. *Endgame in the Western Sahara* by Toby Shelley, Zed Books, London, 2004, pp. 63–69.
14. *Le Matin du Sahara*, 7 November 2005.

Of course, there had been some oil exploration offshore the Western Sahara in the days of Spanish rule but the war between Morocco and Polisario and the legal status of the territory kept oil companies away after the mid-1970s.

It was the discovery of oil and gas offshore Mauritania that ignited hopes of finding reserves in Western Saharan waters. Mauritanian government revenues are about to begin receiving revenues from the Chinguetti oil field that, if deployed appropriately, could transform the country. More fields and more revenues will follow.

The geology of the Western Sahara is very similar to that of Mauritania. Indeed both form part of a potential oil province that reaches up from the Gulf of Guinea. With current oil prices and with long range forecasts of an average of $40 a barrel, even volumes such as those from Chinguetti would significantly counterbalance Rabat's import bill.

If we add to the economic incentives for oil production the strategic reasons for wanting to control resources rather than have them controlled by a neighbour, it is even more clear that the quest for oil since 2001 has added to Morocco's determination to hang on to the Western Sahara.

In his much interpreted legal opinion for the UN,[15] Hans Correll stressed that the exploitation of the natural resources of a non-self-governing territory should be to the benefit of the people of the territory. Oil, of course, has not yet been found in Saharan waters and if it is it will taken several years at best to begin pumping it. But, assuming it is found, how does one determine its benefits? Indeed, who count as the people of the territory? – For Sahrawis it is the people who lived in the territory before 1975 and their kinfolk while for Morocco it will encompass the hundreds of thousands of settlers. Given that the Peace Plan would grant many settlers the right to vote on the future of the territory, what the UN position might be can only be guessed.

What is sure is that the direct benefits of an oil discovery to people living in the territory will be slight. Petrol prices are already heavily subsidised as an incentive for settlement so there would be no gain there. And anyway Morocco's oil refining capacity is controlled by Saudi Arabian interests. The production development model would probably be similar to Chinguetti, a floating production and export unit, meaning job generation onshore would be minimal.

If oil is discovered, the legal status of the territory and interpretations of what can and cannot be done with its resources will come to the fore. Foreign investment in the Western Sahara is minimal and much of the reason for this is due to its status. Kerr McGee has been very keen to stress it believes it is acting within the terms of Mr Correll's opinion. What cannot be known is how the calculations will work out if oil is found. Will oil companies look at EU fishing boats in Saharan waters, licensed by Morocco, and be encouraged to follow suit? Will they look at the refusal of the US to include the Western Sahara in its free trade agreement with Morocco and decide this means it is better not to trespass across the border? Oil companies have withdrawn from Sudan and Burma due to adverse publicity and Western Sahara campaigners have achieved notable successes in persuading smaller players in the industry to keep out of the territory. Would concern about a concerted campaign against them in Europe and beyond keep oil companies away from the territory?

In his autobiography, King Hassan II explicitly denied that the phosphate reserves of the Western Sahara were a reason for Morocco taking over the territory. Indeed, he argued that investment requirements would outstrip revenues.[16] The latter claim is dubious as Morocco took over modern infrastructure put in place by Spain and, indeed, kept a Spanish company on as a junior partner to help with capital and provide expertise.

Nonetheless, the role, if any, of the Bou Craa deposits in Moroccan calculations remains unclear. Rezette, who wrote from an explicitly pro-Moroccan standpoint in 1975, clearly envisaged Saharan phosphates making Morocco the undisputed leading global producer with a price fixing role similar to that which Saudi Arabia has in Opec. He also stressed it was unthinkable that Mauritania be allowed to control the reserves.[17]

Phosphate prices went from boom to bust in the late 1970s and any dreams of Morocco becoming rich from phosphates disappeared. However, it remains the case that by seizing the world's second biggest potential phosphate producing area, Morocco ensured there would be no southern competitor. Rabat increased its grip on world supply and it maintains it. Bou Craa phosphates have not been developed greatly. Output remains at some 2.5–3.0

15. Opinion delivered to Mr Jagdish Koonjul, president of the UN Security Council, 29 January 2002.

16. *The Challenge*, by Hassan II, translated by Anthony Rhodes, MacMillan, London, 1978, p.163.

17. *Western Sahara and the Frontiers of Morocco*, Robert Rezette, Nouvelles Editions Latines, Paris, 1975, pp. 32–33.

million tonnes a year. The rock is processed at Laayoune Port but is not converted into acid or fertiliser.[18]

Bou Craa has provided significant income and employment for the Sahrawis although both are eroding. It employs around 1,900 people now. In 1968, there were 1,600 Sahrawi employees, falling to 567 a year after the Moroccan takeover. Sahrawi activists say there are now only around 200 and they are mostly in lower grade jobs.[19] Recruitment is done in Morocco, they say. Over the years, Sahrawi workers and retired workers have protested that their wages and pensions have been reduced by Morocco. On the other side of the sand wall, in the refugee camps, the pensions of former miners, paid by Spain, provide much needed income. This is probably a major reason why Polisario does not complain at the continued involvement of Spanish industry in Bou Craa.

There are, of course, other minerals to be found in the Western Sahara, including strategic metals. To date, Morocco has done little prospecting or even surveying but it is easy to envisage titanium or vanadium becoming contested resources in the future.

Supporters of Morocco frequently argue that infrastructural and resource development in the Western Sahara has been greater than in Morocco itself and that this testifies to the benefits of the territory being under Rabat's rule. Even leaving aside the question of whether economic benefit is a substitute for self-determination, this argument needs to be debunked. Taking Moroccan statistics at face value, it is true that the Western Sahara has better provision of drinking water and electricity than much of Morocco. It is true that much money has been spent on building roads and ports and public buildings. There are a number of housing developments, which officials are anxious to show off to visitors.

However, the primary reason for expenditure on social infrastructure was as a complement to the policy of subsidising food and fuel in the territory, paying double salaries to public employees, and providing handouts to the unemployed. The two policies were necessary to attract settlers to the Western Sahara, whose 1974 population of some 70,000 Sahrawis is now in the hundreds of thousands (even excluding the 160,000 troops there), some three-quarters of them settlers. Without such policies it would simply not have been possible for settlers to survive in such numbers given the limited infrastructure available at the end of Spanish rule. Even with this expenditure, many thousands of Moroccans in the Western Sahara live in abysmal conditions, such as the Wahda camps in the major towns. To the extent that Sahrawis have benefited from social expenditure it has been at the margins.

When it comes to resource exploitation, the benefits to Sahrawis are increasingly marginal. As has been mentioned, Sahrawis have been edged out of employment at Bou Craa in favour of Moroccans and often not even Moroccans already living in the territory. Historically, few Sahrawis have been involved in fishing. Today, Sahrawi operators of small boats are being squeezed by limits on the number of permits available, lack of finance, and conservation measures. Some notables dispense low paid fish-processing jobs and, allegedly, control fishing licences. The Southern Development Agency had plans in 2002 to develop fishing villages along the coast and introduce professional training. Where new accommodation for fishing communities has been built it has not been for Sahrawis and certainly in the case of Leraa (mentioned earlier) lies empty anyway. The emphasis has not been on artisanal fishing to support settlers but on exploitation of stocks by trawlers for export, the revenues from which go into the Moroccan economy with little evident benefit to the Western Sahara.

Oil exploitation will follow the same pattern except that the revenues will flow directly to the coffers of the Moroccan state and the employment generation will be negligible, probably limited to supply boat operations and provisioning.

It can be argued, that the resources issue in the Western Sahara dispute has become more important in recent years as fishing has become more significant for both the colonisation project and for the Moroccan economy, and as hopes of oil discoveries have intensified in parallel with the rise in global prices.

Polisario and its supporters are seeking to counter Moroccan exploitation of Saharan resources through a variety of strategies, including: the threat of legal action against the EU if the fishing agreement is implemented; lobbying campaigns against companies working in or importing from the Western Sahara; issuing of exploration licences and options in the name of the Sahrawi Arab Democratic Republic.

At this time, two major issues hang in the air. The first is whether Kerr McGee will move from reconnaissance to exploration in Saharan waters. If it

18. Shelley op cit, p.71.

19. *Ibid.*, p.91.

does, it would suggest two things, a positive assessment of the chances of finding commercial quantities of oil, and a decision to contest the common understanding of Mr Corell's opinion.

The second is whether the EU will ratify an agreement that permits its fishing vessels to work in Saharan waters again but this time under an agreement that makes specific reference to the Western Sahara. If it does do so – under Spanish and French pressure – its action will be seen as a green light for other industries to work in the area. That would act as a backdoor legitimation of Moroccan rule, would assist Morocco to fund its project in the territory, would run counter to apparent US policy, and would undermine a UN process that has already run into the sand.

Finally, the increased importance of the resources of the occupied territories in the overall conflict over the Western Sahara is mirrored at the political level where Sahrawis under Moroccan rule have, since the late 1990s, become key actors. Their civil rights movement, currently facing the most severe repression since its foundation, now leads the struggle for Sahrawi rights while the refugee camps and the diplomatic corps have been sidelined in the absence of war or negotiations.

It may be that the Sahrawis of the occupied territories and southern Morocco are able to break the logjam that currently blocks progress towards a settlement, just as the first Palestinian intifada created new opportunities and realities in the struggle for Palestine. However, if that is to be the case, it will require monitoring and intervention from outside because the stakes are rising for Morocco. Faced with increasingly widespread and increasingly politicised Sahrawi protests on the one hand and growing importance of the actual and potential resource wealth of the territory, Morocco can be expected to continue to try to crush resistance to its settlement and exploitation of the Western Sahara.

Swedish foreign policy on the Western Sahara conflict

Magnus Schöldtz and Pål Wrange

Sweden has since the establishment of the United Nations promoted the important role of the organization in its efforts to promote peace around the world. For Sweden it has been natural to be involved in the UN efforts together with the whole international community in order to promote peace and security. The United Nations has also played an important role in the decolonization process during the post-war period. In *The Declaration on the Granting of Independence to Colonial Countries and Peoples*[1], adopted by the General Assembly in 1960, the member countries declared the absolute necessity of ending colonialism as soon as possible. In 1963 the Western Sahara was listed as non-self-governing territory by the United Nations (UN Charter, Ch. XI). Many former colonies attained independence during the 1960s and 1970s. Today there is still one colonial territory left on the African continent that has not yet been decolonized, the former Spanish colony Spanish Sahara known today as Western Sahara.

As early as in 1966 the United Nations adopted its first resolution[2] on the territory urging Spain to organize, as soon as possible, a referendum under UN supervision on the territory's right to exercise its right to self-determination.

The Moroccan occupation of the territory, pursuant to the Madrid Agreement in 1975, is a violation of International Law and a non-legal act of hostility. In contrast to the colonies – which were conquered during a period when colonization was, regrettably, legal – the occupation and annexation of Western Sahara by Morocco in 1975 was not legal at that time. The International Court of Justice has decided that Morocco has no legal claim on the territory, and the UN Security Council has requested Morocco to withdraw from the territory. Morocco has not only an obligation to respect the right of Western Sahara to self-determination but also end its illegal annexation of Western Sahara.

The Swedish Government's position on the status of Western Sahara is crystal clear: Western Sahara is not a part of Morocco and Morocco has no legal title or claim to Western Sahara. The people of Western Sahara have a right to self-determination, which, in this case, can be fulfilled by the creation of a fully sovereign state, if they so choose. The situation for the people of Western Sahara is unacceptable and it is of greatest importance that the conflict is soon peacefully resolved.

Since Morocco has no legal right to be in the territory they have no legal right to the natural resources of Western Sahara. Consequently, Morocco has no right as a sovereign to dispose of the natural resources of Western Sahara for its own purposes. Furthermore, any agreement that Morocco enters into with other countries does not cover Western Sahara as a part of Morocco.

This does not mean that Morocco may not touch the natural resources of Western Sahara. Legally speaking, Morocco is an occupying power with regard to Western Sahara. This means that Morocco has all of the rights and obligations of an occupying power. The basic principles are: the occupying power may not change the legal and political framework; it should proceed from the premise that the occupation is temporary and that the occupying power has no right to introduce permanent changes into the occupied territory, in this case Western Sahara. The right of a people to permanent sovereignty over its natural resources points in the same direction.

Nevertheless, Morocco also has a responsibility to uphold order as well as the "vie publique", public life and welfare (as is provided in the Hague Convention IV). This means that Morocco must offer basic public goods to the population of Western Sahara. This entails that there must be income to pay for these goods. Consequently, one conclusion is that Morocco may make arrangements with regard to the resources of Western Sahara, provided that it benefits the Western Sahara people. This would

1. UN General Assembly, 1960, Resolution 1514 (XV).
2. UN General Assembly, 1966, Resolution 2229 (XXI).

be particularly pertinent with regard to renewable resources, like reasonable fishing, but probably less applicable to non-renewable resources like oil and phosphate, or at least applicable only with great caution. The principle of self-determination further requires that the people of Western Sahara should be able to influence how it is done.

The Swedish Government welcomed the opinion by the UN Legal Counsel in 2002. Firstly, because it was regarded as a good thing that the Security Council asked the UN Office of Legal Affairs (OLA) for advice. Secondly, because the opinion was in line with the Swedish policy.

This seems to entail the following consequences:

- Morocco may not dispose of the resources of Western Sahara for its own good.
- Any agreement entered into by Morocco in its own name does not cover Western Sahara, since Western Sahara is not a part of Morocco.
- Morocco may, however, enter into agreements as an occupying power with regard to the territory of Western Sahara.
- Any such agreement must be for the benefit of the people of Western Sahara.
- Special caution must be shown regarding non-renewable resources.
- The people of Western Sahara should be consulted in any such arrangement.

The Swedish Government supports the UN and its Secretary General's efforts to find a negotiated solution, and will support any solution freely agreed upon by the parties. Sweden has for many years in the EU, United Nations and in contacts with other countries pursued the demands on the rights of Western Sahara to self-determination, and finds it important that the population, in a democratic way, can decide on the status of the territory.

The role of the United Nations is central in order to end the Western Sahara conflict. Sweden has contributed 5 million SEK to the confidence-building measures in Western Sahara under the aegis of UNHCR and the UN mission MINURSO. Earlier Sweden has contributed with civil policemen and mine clearance experts.

The Swedish Government is concerned about the unsolved humanitarian issues, about the situation in the territory and in the refugee camps in Tindouf, Algeria. Sweden has for many years been one of the major contributors of humanitarian aid to the refugee camps in Tindouf. Sweden also contributes through multilateral organizations such as the World Food Programme (WFP) and UNHCR. The EU humanitarian office ECHO preserves a buffer stock of basic food for the camps usually covering a period of three months.

The EU common foreign and security policy is a powerful instrument in many situations provided that Member States have a strong will to support it. There is agreement within the EU that the United Nations has a central role in solving the Western Sahara conflict. Sweden is of the opinion that the EU could take a more active role in order to solve the conflict and support the UN in its effort. Unfortunately the EU so far has been rather passive in spite of its geographical vicinity to the conflict and its close co-operation in other fields with the parties involved. The EU countries make different assessments and have different interests in this conflict. For the EU to take a more active role Member States have to be in agreement about this.

As to the Fisheries Partnership Agreement negotiated between the European Commission and Morocco, Sweden is of the opinion that waters outside Western Sahara must not be included in the Agreement. Before the Agreement can enter into force it has to be approved by the EU Council (by a qualified majority) and the European Parliament has to give its opinion. Given the decision rules for this kind of Agreement it means that one single country like Sweden cannot influence the outcome. Sweden has requested an analysis of how the Agreement relates to international law with regard to Western Sahara.

The Swedish position as to Western Sahara can be summarized in four points:

- Sweden fully supports the role of UN and the efforts of the Secretary-General to solve the conflict.
- Sweden emphasizes the right to self-determination of the people of Western Sahara and can support a political solution if it considers this principle as well as international law.
- Sweden is one of the major contributors of humanitarian aid to the refugees in Tindouf.
- Sweden wants to see a more active role of the EU in the Western Sahara conflict.

In the Swedish Parliament on May 20 2005 the Minister of Foreign Affairs stated the Swedish position on the situation in Western Sahara as follows "The Swedish Government emphasizes the importance of solving the conflict in accordance with international

law and that the right to self-determination of the Western Saharan population will be respected. This principle is also sanctioned in UN Security Council resolution No 1598[3]. A referendum is the natural way to practise self-determination and should be the foundation for a future solution of the conflict. In this context Sweden regrets that Morocco rejected the Baker Plan. The Baker Plan would create an administrative authority, where the Western Saharans are given a central role, to be established in Western Sahara during a transitional period. Thereafter a referendum about the status of the territory should be organized on the following alternatives: independence, autonomy or integration in Morocco. The plan was accepted by Polisario. However Morocco explained, in a letter to the UN Secretary General in April 2004, that it could not accept the Plan because voting on independence for the territory would be an act of interference in Moroccan sovereignty."[4]

3. UN, Security Council, 2005, Resolution S/RES/159 8.

4. Parliamentary records 2004/05:124, Friday 20 May. § 2 Reply to interpellation 2004/05:563 on the situation in Western Sahara. The Swedish Parliament.

APPENDIX 1.

Letter dated 29 January 2002 from the Under-Secretary-General for Legal Affairs, the Legal Counsel, addressed to the President of the Security Council[1]

1. In a letter addressed to me on 13 November 2001, the President of the Security Council requested, on behalf of the members of the Council, my opinion on "the legality in the context of international law, including relevant resolutions of the Security Council and the General Assembly of the United Nations, and agreements concerning Western Sahara of actions allegedly taken by the Moroccan authorities consisting in the offering and signing of contracts with foreign companies for the exploration of mineral resources in Western Sahara".

2. At my request, the Government of Morocco provided information with respect to two contracts, concluded in October 2001, for oil-reconnaissance and evaluation activities in areas offshore Western Sahara, one between the Moroccan Office National de Recherches et d'Exploitations Petrolières (ONAREP) and the United States oil company Kerr McGee du Maroc Ltd., and the other between ONAREP and the French oil company TotalFinaElf E&P Maroc. Concluded for an initial period of 12 months, both contracts contain standard options for the relinquishment of the rights under the contract or its continuation, including an option for future oil contracts in the respective areas or parts thereof.

3. The question of the legality of the contracts concluded by Morocco offshore Western Sahara requires an analysis of the status of the Territory of Western Sahara, and the status of Morocco in relation to the Territory. As will be seen, it also requires an analysis of the principles of international law governing mineral resource activities in Non-Self-Governing Territories.

4. The law applicable to the determination of these questions is contained in the Charter of the United Nations, in General Assembly resolutions pertaining to decolonization, in general, and economic activities in Non-Self-Governing Territories, in particular, and in agreements concerning the status of Western Sahara. The analysis of the applicable law must also reflect the changes and developments which have occurred as international law has been progressively codified and developed, as well as the jurisprudence of the International Court of Justice and the practice of States in matters of natural resource activities in Non-Self-Governing Territories.

A. The status of Western Sahara under Moroccan administration

5. A Spanish protectorate since 1884, Spanish Sahara was included in 1963 in the list of Non-Self-Governing Territories under Chapter XI of the Charter (A/5514, annex III). Beginning in 1962, Spain as administering Power transmitted technical and statistical information on the Territory under Article 73 e of the Charter of the United Nations. This information was examined by the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples ("the Special Committee"). In a series of General Assembly resolutions on the question of Spanish/Western Sahara, the applicability to the Territory of the Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly resolution 1514 (XV)) was reaffirmed.

6. On 14 November 1975, a Declaration of Principles on Western Sahara was concluded in Madrid between Spain, Morocco and Mauritania ("the Madrid Agreement"), whereby the powers and responsibilities of Spain, as the administering Power of the Territory, were transferred to a temporary tripartite administration. The Madrid Agreement did not transfer sovereignty over the Territory, nor did it confer upon any of the signatories the status of

1. S/2002/161, United Nations Security Council, 12 February 2002.

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.

7. On 26 February 1976, Spain informed the Secretary-General that as of that date it had terminated its presence in Western Sahara and relinquished its responsibilities over the Territory, thus leaving it in fact under the administration of both Morocco and Mauritania in their respective controlled areas. Following the withdrawal of Mauritania from the Territory in 1979, upon the conclusion of the Mauritano-Sahraoui agreement of 19 August 1979 (S/13503, annex I), Morocco has administered the Territory of Western Sahara alone. Morocco, however, is not listed as the administering Power of the Territory in the United Nations list of Non-Self-Governing Territories, and has, therefore, not transmitted information on the Territory in accordance with Article 73 e of the Charter of the United Nations.

8. Notwithstanding the foregoing, and given the status of Western Sahara as a Non-Self-Governing Territory, it would be appropriate for the purposes of the present analysis to have regard to the principles applicable to the powers and responsibilities of an administering Power in matters of mineral resource activities in such a Territory.

B.
The law applicable to mineral resource activities in Non-Self-Governing Territories

9. Article 73 of the Charter of the United Nations lays down the fundamental principles applicable to Non-Self-Governing Territories. Members of the United Nations who assumed responsibilities for the administration of these Territories have thereby recognized the principle that the interests of the inhabitants of these Territories are paramount, and have accepted as a sacred trust the obligation to promote to the utmost the well-being of the inhabitants of these Territories. Under Article 73 e of the Charter, they are required to transmit regularly to the Secretary General for information purposes statistical and other information of a technical nature relating to economic, social, and educational conditions in the Territories under their administration.

10. The legal regime applicable to Non-Self-Governing Territories was further developed in the practice of the United Nations and, more specifically, in the Special Committee and the General Assembly. Resolutions of the General Assembly adopted under the agenda item entitled "Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples" called upon the administering Powers to ensure that all economic activities in the Non-Self-Governing Territories under their administration did not adversely affect the interests of the peoples of such Territories, but were instead directed towards assisting them in the exercise of their right to self-determination. The Assembly also consistently urged the administering Powers to safeguard and guarantee the inalienable rights of the peoples of those Territories to their natural resources, and to establish and maintain control over the future development of those resources (resolutions 35/118 of 11 December 1980, 52/78 of 10 December 1997, 54/91 of 6 December 1999, 55/147 of 8 December 2000 and 56/74 of 10 December 2001).

11. In the resolutions adopted under the agenda item 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 that "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", and that "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" (resolutions 48/46 of 10 December 1992 and 49/40 of 9 December 1994).

12. In an important evolution of this doctrine, the General Assembly, in its resolution 50/33 of 6 December 1995, drew a distinction between economic activities that are detrimental to the peoples of these Territories and those directed to benefit them. In paragraph 2 of that resolution, the General Assembly affirmed "the value of foreign economic investment undertaken in collaboration with the peoples of the Non-Self-Governing Territories and in accordance with their wishes in order to make a valid contribution to the socio-economic development of

the Territories". This position has been affirmed by the General Assembly in later resolutions (resolutions 52/72 of 10 December 1997, 53/61 of 3 December 1998, 54/84 of 6 December 1999, 55/138 of 8 December 2000 and 56/66 of 10 December 2001).

13. The question of Western Sahara has been dealt with both by the General Assembly, as a question of decolonization, and by the Security Council, as a question of peace and security. The Council was first seized of the matter in 1975, and in its resolutions 377 (1975) of 22 October 1975 and 379 (1975) of 2 November 1975 it requested the Secretary-General to enter into consultations with the parties. Since 1988, in particular, when Morocco and the Frente Popular para la Liberacíon de Saguia el-Hamra y del Río de Oro (Frente POLISARIO) agreed, in principle, to the settlement proposals of the Secretary-General and the Chairman of the Organization of African Unity, the political process aiming at a peaceful settlement of the question of Western Sahara has been under the purview of the Council. For the purposes of the present analysis, however, the body of Security Council resolutions pertaining to the political process is not relevant to the legal regime applicable to mineral resource activities in Non-Self-Governing Territories and for this reason is not dealt with in detail in the present letter.

14. The principle of "permanent sovereignty over natural resources" as the right of peoples and nations to use and dispose of the natural resources in their territories in the interest of their national development and well-being was established by the General Assembly in its resolution 1803 (XVII) of 14 December 1962. It has since been reaffirmed in the 1966 International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights, as well as in subsequent General Assembly resolutions, most notably, resolution 3201 (S-VI) of 1 May 1974, entitled "Declaration on the Establishment of a New International Economic Order", and resolution 3281 (XXIX) of 12 December 1974, containing the Charter of Economic Rights and Duties of States. While the legal nature of the core principle of "permanent sovereignty over natural resources", as a corollary to the principle of territorial sovereignty or the right of self-determination, is indisputably part of customary international law, its exact legal scope and implications are still debatable. In the present context, the question is whether the principle of "permanent sovereignty" prohibits *any* activities related to natural resources undertaken by an administering Power (cf. para. 8 above) in a Non-Self-Governing Territory, or only those which are undertaken in disregard of the needs, interests and benefits of the people of that Territory.

C.
The case law of the International Court of Justice

15. The question of natural resource exploitation by administering Powers in Non- Self-Governing Territories was brought before the International Court of Justice in the case of *East Timor* (*Portugal v. Australia)* and the case concerning *Certain Phosphate Lands in Nauru* (*Nauru v. Australia*). In neither case, however, was the question of the legality of resource exploitation activities in Non-Self-Governing Territories conclusively determined.

16. In the case of *East Timor*, Portugal argued that in negotiating with Indonesia an agreement on the exploration and exploitation of the continental shelf in the area of the Timor Gap, Australia had failed to respect the right of the people of East Timor to permanent sovereignty over its natural wealth and resources, and the powers and rights of Portugal as the administering Power of East Timor. In the absence of Indonesia's participation in the proceedings, the International Court of Justice concluded that it lacked jurisdiction.

17. In the *Nauru Phosphate* case, Nauru claimed the rehabilitation of certain phosphate lands worked out before independence in the period of the trusteeship administration by Australia, New Zealand and the United Kingdom of Great Britain and Northern Ireland. Nauru argued that the principle of permanent sovereignty over natural resources was breached in circumstances in which a major resource was depleted on grossly inequitable terms and its extraction involved the physical reduction of the land. Following the judgment on the Preliminary Objections, the parties reached a settlement and a judgment on the merits was no longer required.

D.
The Practice of States

18. In the recent practice of States, cases of resource exploitation in Non-Self-Governing Territories have, for obvious reasons, been few and far apart. In 1975, the United Nations Visiting Mission to Spanish Sahara reported that at the time of the visit, four companies held prospecting concessions in offshore

Spanish Sahara. In discussing the exploitation of phosphate deposits in the region of Bu Craa with Spanish officials, the Mission was told that the revenues expected to accrue would be used for the benefit of the Territory, that Spain recognized the sovereignty of the Saharan population over the Territory's natural resources and that, apart from the return of its investment, Spain laid no claim to benefit from the proceeds (A/10023/Rev.1, p. 52).

19. The exploitation of uranium and other natural resources in Namibia by South Africa and a number of Western multinational corporations was considered illegal under Decree No. 1 for the Protection of the Natural Resources of Namibia, enacted in 1974 by the United Nations Council for Namibia, and was condemned by the General Assembly (resolutions 36/51 of 24 November 1981 and 39/42 of 5 December 1984). The case of Namibia, however, must be seen in the light of Security Council resolution 276 (1970) of 30 January 1970, in which the Council declared that the continued presence of South Africa in Namibia was illegal and that consequently all acts taken by the Government of South Africa were illegal and invalid.

20. The case of East Timor under the United Nations Transitional Administration in East Timor (UNTAET) is unique in that, while UNTAET is not an administering Power within the meaning of Article 73 of the Charter of the United Nations, East Timor is still technically listed as a Non-Self-Governing Territory. By the time UNTAET was established in October 1999, the Timor Gap Treaty was fully operational and concessions had been granted in the Zone of Cooperation by Indonesia and Australia, respectively. In order to ensure the continuity of the practical arrangements under the Timor Gap Treaty, UNTAET, acting on behalf of East Timor, concluded on 10 February 2000 an Exchange of Letters with Australia for the continued operation of the terms of the Treaty. Two years later, in anticipation of independence, UNTAET, acting on behalf of East Timor, negotiated with Australia a draft "Timor Sea Arrangement" which will replace the Timor Gap Treaty upon the independence of East Timor. In concluding the agreement for the exploration and exploitation of oil and natural gas deposits in the continental shelf of East Timor, UNTAET, on both occasions, consulted fully with representatives of the East Timorese people, who participated actively in the negotiations.

E. Conclusions

21. The question addressed to me by the Security Council, namely, "the legality … of actions allegedly taken by the Moroccan authorities consisting in the offering and signing of contracts with foreign companies for the exploration of mineral resources in Western Sahara", has been analysed by analogy as part of the more general question of whether mineral resource activities in a Non-Self-Governing Territory by an administering Power are illegal, as such, or only if conducted in disregard of the needs and interests of the people of that Territory. An analysis of the relevant provisions of the Charter of the United Nations, General Assembly resolutions, the case law of the International Court of Justice and the practice of States supports the latter conclusion.

22. The principle that the interests of the peoples of Non-Self-Governing Territories are paramount, and their well-being and development is the "sacred trust" of their respective administering Powers, was established in the Charter of the United Nations and further developed in General Assembly resolutions on the question of decolonization and economic activities in Non-Self-Governing Territories. In recognizing the inalienable rights of the peoples of Non-Self- Governing Territories to the natural resources in their territories, the General Assembly has consistently condemned the exploitation and plundering of natural resources and any economic activities which are detrimental to the interests of the peoples of those Territories and deprive them of their legitimate rights over their natural resources. The Assembly recognized, however, the value of economic activities which are undertaken in accordance with the wishes of the peoples of those Territories, and their contribution to the development of such Territories.

23. In the cases of *East Timor* and *Nauru*, the International Court of Justice did not pronounce itself on the question of the legality of economic activities in Non-Self-Governing Territories. It should be noted, however, that in neither case was it alleged that mineral resource exploitation in such Territories was illegal per se. In the case of *East Timor*, the conclusion of an oil exploitation agreement was allegedly illegal because it had not been concluded with the administering Power (Portugal); in the *Nauru* case, the illegality allegedly arose because the mineral resource

exploitation depleted unnecessarily or inequitably the overlaying lands.

24. The recent State practice, though limited, is illustrative of an opinio juris on the part of both administering Powers and third States: where resource exploitation activities are conducted in Non-Self-Governing Territories for the benefit of the peoples of those Territories, on their behalf or in consultation with their representatives, they are considered compatible with the Charter obligations of the administering Power and in conformity with the General Assembly resolutions and the principle of "permanent sovereignty over natural resources" enshrined therein.

25. The foregoing legal principles established in the practice of States and the United Nations pertain to economic activities in Non-Self-Governing Territories, in general, and mineral resource exploitation, in particular. It must be recognized, however, that in the present case, the contracts for oil reconnaissance and evaluation do not entail exploitation or the physical removal of the mineral resources, and no benefits have as of yet accrued. The conclusion is, therefore, that, while the specific contracts which are the subject of the Security Council's request are not in themselves illegal, if further exploration and exploitation activities were to proceed in disregard of the interests and wishes of the people of Western Sahara, they would be in violation of the principles of international law applicable to mineral resource activities in Non-Self-Governing Territories.

(Signed)
Hans Corell
Under-Secretary-General for Legal Affairs
The Legal Counsel

APPENDIX 2.

The role of natural resources in the Western Sahara conflict

Every conflict, whether it be a military one like in Iraq or Afghanistan or "just" a diplomatic one, has its deeper seated reasons in economic matters. These real reasons are often covered by cultural, religious or similar arguments, but what remains essential in the end are the economic interests of the parties involved in the conflict. This is also the case in the Western Sahara conflict.

As early as in the 1940s Spanish interests focused on the huge reserves of phosphates in Buu Craa, which have only been exploited since the end of the Spanish colonial rule. Morocco's interests, however, did not remain limited to reserves of phosphates, but also included fish and sea products. These resources, which can be found in a wide variety off the coast of the Western Sahara, have been exploited since the 1970s.

Phosphate

Although phosphate had already been discovered by the Spaniard Manuel Alia in 1945, the first exploitation in the area of Buu Craa only started in 1972. In order to transport the phosphate to other countries, Buu Craa, which is situated at a distance of about 100 kilometres from the coast, first had to be connected with the harbour in El Aaiún using an 11-piece conveyor belt. As early as in 1976, however, this conveyer was destroyed by the Polisario to stop the exploitation of Saharawi property by the "Office Chérifien des Phosphates" (OCP), a company, which had in the meanwhile been taken over by the Moroccans. They succeeded and for many years Morocco could not pursue the suppression of the Saharawi people through the exploitation of their resources.

Oil and Gas

Another reason for the big influence of economic interests in the region are the oil and gas resources that are assumed to be abundant in the offshore territory. In the 1970s, the first explorations were carried out with the aid of western companies (BP, Philips Oil Company), revealing rich and lucrative resources. Due to the political situation, these reserves disappeared from the scene and have only attracted interest again since 2000. In 1981 Morocco founded the state-owned enterprise "Office National de Recherches et d´Exploitations Pétrolières" (ONAREP) in order to be able to set up joint ventures with foreign companies and to drill for oil.

In October 2001 international protests were sparked off by the signing of contracts between ONAREP and "Kerr McGee du Maroc" (a 100% subsidiary of Kerr McGee Corporation, Texas) as well as with TotalFinaElf (today: Total Group, France). Future exploitation rights were also granted in the contracts. According to international law, such research activities are allowed. However, these contracts would infringe on the Saharawi population's right to dispose of their own resources as soon as exploitation started. This right of peoples and nations to permanent sovereignty over their natural resources was already confirmed by the United Nations in 1962, especially in connection with non-self-governing territories.

As a reaction to these international protests, even investment funds decided to withdraw their money from these companies because of humanitarian reasons. Furthermore, all but one oil company completely abandoned their business activities in the Western Sahara. It was only the US-American group Kerr McGee that prolonged their contracts and are still doing their dirty business at the expense of the Saharawi population.

Polisario as the only officially recognized representative of the Saharawi people should actually have the right to dispose of Saharawi resources.

Fisheries

In contrast to the arid landscape of Western Sahara, rich fish reserves can be found in offshore territory. Although the Sahrawis have never been deeply involved in fisheries, fish reserves, and above all marine animals, such as octopuses and cuttlefish, are important natural resources and therefore have always been exploited by foreign powers.

Until November 1999 the European Union had a fishing licence for many fishing areas which gave especially Spanish fleets the possibility to profit from the fish reserves. Thus the Saharawis were cut off from their rich fishing zones. When the negotiations between the EU and Morocco on the renewal of the fisheries agreement finally failed in 2001, long-term overfishing had already had dramatic effects.

It is now again a critical moment for the natural resources of the Western Sahara, as a new fisheries agreement has already been agreed upon with Morocco and will soon be adopted by the European Council. The European Parliament has a consultative role in this decision making process. We have to send a clear message: the natural resources of the Western Sahara must not be exploited either by the occupying power Morocco, or by European countries. Therefore, the territories of Western Sahara must not be included in the agreement with Morocco.

Karin Scheele

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