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Annual report of the United Nations High Commissioner  
for Human Rights and reports of the Office of the  
High Commissioner and the Secretary-General

**Joint written statement\* submitted by the International Youth and Student Movement for the United Nations, World Federation of Democratic Youth (WFDY), non-governmental organizations in general consultative status, American Association of Jurists, France Libertés : Fondation Danielle Mitterrand, International-Lawyers.Org, Permanent Assembly for Human Rights, World Barua Organization (WBO), non-governmental organizations in special consultative status, International Educational Development, Inc., Liberation, Mouvement contre le racisme et pour l'amitié entre les peuples, non-governmental organizations on the roster**

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

[30 May 2016]

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

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## **Western Sahara: its legal status and the United Nations' primary responsibility towards the only Non Self-Governing Territory without a recognized Administering power**

### **INTRODUCTION**

In adopting resolution 2285, on 29<sup>th</sup> April 2016, the Security Council has extended the mandate of the United Nations Mission for the Referendum in Western Sahara (MINURSO) for one more year. The issue has never been so controversial<sup>1</sup>: for the first time since the establishment of MINURSO in 1991, 1/3 of the Security Council's members did not vote in favour of the text of the resolution<sup>2</sup>; for the first time, one of the five permanent members (Russian Federation) and member of the "Group of friends of Western Sahara" did not vote in favour of the text of the resolution.

This was the direct consequence of the unilateral decision taken last March 16<sup>th</sup> by the Kingdom of Morocco to expel the majority of the civilian and political component of the MINURSO from the Non Self-Governing Territory of Western Sahara as a response to a statement made by the UN Secretary-General regarding the occupation of the Territory by the Kingdom of Morocco.

### **THE OCCUPATION OF WESTERN SAHARA BY THE KINGDOM OF MOROCCO**

As documented by the International Court of Justice (ICJ) in its Advisory Opinion dated 16 October 1975<sup>3</sup>, «in its Royal Order of 26 December 1884, Spain proclaimed that the King was tacking the Río de Oro under his protection on the basis of agreements which had been entered into with the chiefs of the local tribes»<sup>4</sup>. Concerning the legal ties (with the territory and in relation to the people) between Western Sahara and the Kingdom of Morocco, the ICJ stressed that «at the time of Spanish colonization, there was no evidence of the existence of one single State comprising the territory of Western Sahara and Morocco» and further highlighted that «The findings of the Court regarding the nature of the legal ties of the territory with the Kingdom of Morocco did not involve territorial sovereignty or co-sovereignty or territorial inclusion in a legal entity.»<sup>5</sup>. The ICJ concluded in affirming that «the Court's conclusion is that the materials and information presented to it do not establish any tie of territorial sovereignty between the territory of Western Sahara and the Kingdom of Morocco... 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.»<sup>6</sup>

Furthermore, the ICJ stated that «The inferences to be drawn from the information before the Court concerning internal acts of Moroccan sovereignty and from that concerning international acts are, therefore, in accord in not providing indications of the existence,... of any legal tie of territorial sovereignty between Western Sahara and the Moroccan State.»<sup>7</sup>

The Court has recognized the validity of the principle of self-determination, "defined as the need to pay regard to the freely expressed will of the peoples".

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<sup>1</sup> 49 out of the 52 resolutions submitted to the Security Council on "The situation concerning Western Sahara" were adopted by consensus or unanimously; resolution 1282 (14 December 1999) was adopted with the sole abstention of Namibia and resolution 1301 (31 May 2000) was adopted with a vote against (Namibia) and two abstentions (Jamaica and Mali).

<sup>2</sup> Uruguay and the Bolivarian Republic of Venezuela voted against, while Angola, New Zealand and the Russian Federation abstained.

<sup>3</sup> Western Sahara, Advisory Opinion, I.C.J. Reports 1975

<sup>4</sup> *Ibid*, par. 81

<sup>5</sup> *Ibid*, par. 158

<sup>6</sup> *Ibid*, par. 162

<sup>7</sup> *Ibid*, par. 129

The very same day the ICJ released its Advisory Opinion, King Hassan II of Morocco announced the launching of the Green March in order “to recover the integrity of the Kingdom’s territory”, thus disregarding the conclusions of the ICJ’s Advisory Opinion requested by the General Assembly with its resolution 3292 (XXIX)<sup>8</sup> entitled «Question of “Spanish Sahara”».

The Security Council (SC) reacted to the action taken by the Kingdom of Morocco with the adoption by consensus of resolution 379 (2 November 1975). The SC urged «all parties concerned to avoid any unilateral or other action which might further escalate the tension in the area». When the Green March was launched and the Moroccan army opened the way to the Moroccan population for the occupation of Western Sahara, the SC adopted by consensus resolution 380 (6 November 1975), which noted with grave concern the deterioration of the situation in Western Sahara, deplored the holding of the march and called upon «Morocco immediately to withdraw from the Territory of Western Sahara all the participants in the march»<sup>9</sup>.

In a recent article published by the International Judicial Monitor<sup>10</sup>, the former Under-Secretary-General for Legal Affairs and Legal Counsel for the UN, Mr. Hans Corell, points out that the Green March was probably a violation of Article 49 of the Fourth Geneva Convention, which prohibits an Occupying power from deporting or transferring parts of its own civilian population into the territory it occupies.

The General Assembly (UNGA), on 10 December 1975, in adopting resolution 3458, requested the Government of Spain, as the administering Power to take immediately all necessary measures so that all Saharans originating in the Territory may exercise fully and freely their inalienable right to self-determination.

It is worthy reminding that in December 1966 already, in adopting resolution 2229 (XXI), the UNGA invited the administering Power to determine at the earliest possible date, in conformity with the aspirations of the indigenous people of Spanish Sahara, the procedures for holding a referendum with a view to enabling the indigenous population of the Territory to exercise freely its right to self-determination and, to this end, inter alia, to take all necessary steps to ensure that only the indigenous people of the Territory participate in the referendum.

## THE UNILATERAL WITHDRAWAL OF SPAIN FROM WESTERN SAHARA

On 26 February 1976, Spain informed the Secretary-General<sup>11</sup> that as of that date it had terminated its presence in Western Sahara and relinquished its responsibilities over the Territory after having signed an agreement in Madrid with Mauritania and the Kingdom of Morocco<sup>12</sup> whereby the powers and responsibilities of Spain, as the Administering Power of the Territory, were transferred to a temporary tripartite administration composed by the Djemaa (leading body of Sahrawi tribes composed of elders and elected leaders), the Kingdom of Morocco and Mauritania.

As stated by Under-Secretary-General for Legal Affairs and Legal Counsel of the UN, Mr. Hans Corell, in his legal opinion<sup>13</sup> of January 2002 requested by the SC in November 2001, “The Madrid Agreement did not transfer sovereignty over the Territory, nor did it confer upon any of the signatories the status of an Administering Power, a status which Spain alone could not have unilaterally transferred...”.

Since Spain withdrew from the Saharan colonized territory, Western Sahara became the only Non Self-Governing Territory listed 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 that has not an international recognized Administering Power. Therefore, the United Nations bears a primarily responsibility over Western Sahara, notwithstanding the legal responsibility Spain still has as the last Administering power.

<sup>8</sup> Resolution 3292 was adopted with 87 votes (including Mauritania and Morocco) to none, and 43 abstentions

<sup>9</sup> Subsequently, the UN General Assembly condemned the occupation of the Territory by the Kingdom of Morocco (UNGA resolutions 34/37 and 35/19). The General Assembly, in recalling systematically the precedent resolution on the “Question of Western Sahara”, when adopting a new one, has preserved the continuity of the legal status of the Kingdom of Morocco, as Occupying power, in the Non Self-Governing Territory of Western Sahara.

<sup>10</sup> <http://www.judicialmonitor.org/current/specialcommentary.html>

<sup>11</sup> [https://wikileaks.org/plusd/cables/1976USUNN00744\\_b.html](https://wikileaks.org/plusd/cables/1976USUNN00744_b.html)

<sup>12</sup> S/11880

<sup>13</sup> S/2002/61

## CONCLUSION AND RECOMMANDATIONS

Fifty years after the adoption of resolution 2229 (XXI) by the UNGA, 40 years after Western Sahara was occupied by the Kingdom of Morocco, 25 years after the establishment of MINURSO for the implementation of the Settlement Plan adopted by the Security Council<sup>14</sup>, the People from Western Sahara have yet to exercise its inalienable right to self-determination and independence as provided for by UNGA resolution 1514 (XXV) which contains the Declaration on the Granting of Independence to Colonial Countries and Peoples.

The undersigned Non Governmental Organizations call upon:

- the High-Commissioner for Human Rights to play an active role in removing the current obstacles and in meeting the challenges to the full realization of all human rights and in preventing the continuation of human rights violations<sup>15</sup> in Western Sahara; and to consider implementing ECOSOC resolution 2015/16 entitled «Support to Non-Self-Governing Territories by the specialized agencies and international institutions associated with the United Nations»-- for this purpose to develop a technical assistance and capacity building programme with the Sahrawi National Commission of Human Rights (CONASADH<sup>16</sup>);
- all Special procedures of the Human Rights Council, as well as all Treaty Bodies, to bear in mind the particular legal status of the Non Self-Governing Territory of Western Sahara and its occupation by the Kingdom of Morocco, when contemplating to visit the Kingdom of Morocco and Western Sahara or revising reports submitted by the Kingdom of Morocco. In any case, a meaningful dialogue should be initiated with the Sahrawi National Commission of Human Rights (CONASADH).

Association of Humanitarian Lawyers NGO(s) without consultative status, also share the views expressed in this statement.

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<sup>14</sup> SC resolution 658 (29 April 1991)

<sup>15</sup> A/RES/48/141 – OP4(f)

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