

Stolen Future

The taking of natural resources from Western Sahara



Western Sahara Action Forum is an international coalition of over 30 organisations dedicated to the protection of human rights and the implementation of international law in Western Sahara.

Summary

The exploitation and export of natural resources in occupied Western Sahara has grave consequences for peace in the territory and the future of its indigenous inhabitants, the Saharawi.

The export sale of natural resources, especially from the Atlantic Ocean fishery and phosphate mineral rock from an inland mine, provides revenues to Morocco as the illegal occupier. The beginning of commercial development of oil with the start of petroleum recovery in December 2014 will greatly increase these revenues. None of these revenues are directly received by the Saharawi as the indigenous inhabitants of Western Sahara.

Resource “development” activity in the territory also serves as a pretext to justify what is an illegal occupation, with continuing serious human rights abuses. These include resource industries being asymmetrically used for the employment of illegally settled Moroccan nationals into the territory, further marginalising the Saharawi in their own land.

The taking of natural resources from Western Sahara also serves to strengthen Morocco’s control over the territory by allowing it to build physical infrastructure.

Legal Concerns

There are two reasons, or grounds, why the taking of natural resources from occupied Western Sahara is illegal.

The first is that, in the circumstances of an occupation in the context of an international conflict – demonstrated by the 1990/91 ceasefire and the UN commitment to the organisation of a referendum of self-determination for the Saharawi – it is a crime to exploit and realise revenue from the taking of the territory’s resources. This is clear under the Fourth Geneva Convention of 1949, and is something that is prohibited by the Rome Statute 1998 of the International Criminal Court, as being the war crime of pillage. A clearer case than Western Sahara at present is not to be found.

The second ground which prohibits the taking of resources from occupied Western Sahara – also well established in law and which is universally binding on all peoples and states – is that of the Saharawi as the original and sole inhabitants of Western Sahara, have exclusive sovereign rights and control over their natural resources, pending their exercise of the right of self-determination. The former United Nations senior jurist, Hans Corell (the Under-Secretary-General for Legal Affairs) noted this in an opinion for the Security Council, specifically addressing the development and proposed taking of Saharawi resources:

“[I]f 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.” (29 January 2002)

This simple legal “test” requires two things. First, the exploitation of resources must benefit the Saharawi. A corollary is that the activity must also not benefit Morocco as occupier, or those persons which it has allowed to illegally settle in Western Sahara. An additional requirement is that any such development of resources, while going to meet the needs of and serve to develop the social and economic circumstances of the Saharawi, must not impede or be used to deny them their right of self-determination.

The second requirement of the test is that the Saharawi must meaningfully consent to the development of their natural resources. While this is more or less impossible in the present circumstances of an illegal occupation characterised by serious human rights violations, the Saharawi, including through their representative organisation the POLISARIO Front together with a large number of independent civil society organisations have stated that they reject any consent or approval of the development of any resource. In any event, fully half the Saharawi are not capable of realizing the benefits of resources from their territory because they are in exile in refugee camps.

Two other things should be recalled. First, the International Court of Justice, in its 1975 advisory opinion on Western Sahara, concluded (after a review of considerable evidence) that Morocco had no territorial claim or right to the territory, and that the Saharawi enjoyed a clear right of self-determination, as people under colonial domination.

The second is that the ongoing taking of resources from Western Sahara both denies the Saharawi an economic future (while contributing to the occupation of their territory) and undermines the ability of the United Nations to realize its 1990/91 agreements to ensure for the Saharawi the exercise of self-determination. That is why the UN mission in Western Sahara, MINURSO, needs the mandate to oversee and to administer any development of natural resources.

The resources

Oil

The most alarming development of the Western Sahara conflict the last year has been Morocco's oil programme in the territory, in complete disregard of the 2002 UN legal opinion, above.

On 19 December 2014, US oil company Kosmos Energy spudded the first ever well in the waters off the mid-coast of Western Sahara.ⁱ Kosmos holds a 55% interest in the operation, with partners Cairn Energy and the Moroccan state-owned oil and gas agency ONHYM taking respectively a 20% and 25% stake.ⁱⁱ Kosmos aims to complete the drilling by mid-March 2015, well before the UN Security Council's next scheduled hearing on Western Sahara at the end of April. The former UN Legal Counsel has strongly condemned the oil drilling in Western Sahara: "Morocco is breaking international law ... signing an agreement of this nature is in violation of international law," ... "I am looking to the Security Council and the responsibility that the Council has under the UN Charter."ⁱⁱⁱ

In spite of the crystal clear 2002 UN Legal Opinion on the matter and the continuous protests by Saharawi civil society groups and the POLISARIO Front, Morocco has so far awarded seven oil and gas licences in Western Sahara. In addition, Morocco has carved out four additional oil blocks in Western Sahara to attract new interested oil companies.

Phosphates

The largest financial income for the Moroccan government from occupied Western Sahara is from the export of phosphate mineral rock. The production is done by a subsidiary of the Moroccan state phosphate company OCP. According to estimates made by Western Sahara Resource Watch, OCP produced approximately 2,2 million tonnes of phosphates in 2013, at a value of approximately US\$330 million.^{iv} This is about 10 times greater than the refugees from Western Sahara receive in multilateral humanitarian aid annually. Almost half the production in 2014 went to Agrium Inc (Canada) with a further 20% to Lifosa AB (Lithuania/Russia).^v

Fishing

In 2014, EU member country commercial fishing vessels returned to the waters of Western Sahara, following ratification of a new operative Protocol to the EU-Morocco Fisheries Partnership Agreement by the King of Morocco in July 2014.^{vi} The European Commission and Council had already approved the deal late 2013, though several Member States had objected to the agreement, noting that it is in violation of international law. Hans Corell is on record in recent years as stating that the EU, through such practice, violates international law and undermines the UN peace efforts. The new agreement is the first European Union fisheries partnership agreement since 2010 that does not have a separate Human Rights Clause.^{vii} All Saharawi civil society organisations have objected to the deal, but their concerns were not listened to.^{viii} Several Saharawi were injured by Moroccan police as Saharawi protesters demonstrated against the EU-Moroccan plans.^{ix}

In addition to the EU fleet, Russian trawlers continue to fish offshore Western Sahara. This was in violation of the EU-Russian agreement, which had stipulated that fisheries would only take place in the EEZ of Morocco.^x The waters of Western Sahara have never been claimed by Morocco as its EEZ, and could not be as a matter of international law. In 2014 WSRW also observed Japanese longliners fishing for high value tuna in Western Saharan waters, in addition to Morocco's own fishing fleet.^{xi}

Neither the EU, Russia, Japan, nor Morocco have sought the consent of the Saharawi people as the original, legitimate people of Western Sahara before entering into these agreements.

Morocco's own coastal waters have been overexploited, so that 80% of fish landed now come from Saharawi waters. All offshore fishing is by Moroccan-owned trawlers. Moroccans also control the traditional inshore fishing; very few licences are granted to Saharawi.

Renewable energy

The Moroccan government is set on producing wind and solar energy in Western Sahara, to decrease its own dependency on costly petroleum imports. By 2020, Morocco aims to increase Western Sahara's share in Morocco's total energy production to 26,4% up from 5,5% in 2013. Several international companies have already indicated their interest or have signed contracts with the Moroccan government for building wind and/or solar plants in occupied Western Sahara.^{xii}

Alternative, green sources of energy are always desirable, but in Western Sahara they extend the electrification of the territory in support of yet more Moroccan national settling in the territory, and foster the perception of an acceptable annexation.

Agriculture production

There are today 11 plantations in the proximity of Dakhla producing agricultural products mainly for the European market.^{xiii} All farms are owned by Moroccan conglomerates, by French multinational firms or by the company of the Moroccan royal family. No farms are owned by the local Saharawi, and not even by small-scale Moroccan settlers in the territory. The farms produce mostly cherry tomatoes, but also melons and some other vegetables, all produced on fields irrigated by non-renewable fossil water. Almost all the workers are reported to be from Morocco, being settled in new housing complexes on the occupied land.

Conclusion

The exploitation of resources creates an impediment to the resolution of the conflict in Western Sahara. It does so directly by creating employment opportunities for Moroccan settlers and by the realization of income for the Moroccan government. Foreign corporations entering into business deals with Moroccan companies or authorities in the occupied territories help to foster the impression of political legitimacy to the occupation. The "trading" in Saharawi resources is illegal under international law unless the Saharawi as the original, indigenous inhabitants agree to and also benefit from the exploitation of their resources. To fulfil its central responsibility of implementing the referendum of self-determination MINURSO must be mandated to monitor and make meaningful comment about exploitation of resources, including to ensure that the benefits from them accrue to the Saharawi. The original terms of MINURSO's mandate and the agreement of all three parties - the UN, Morocco and the POLISARIO Front – dating from 1991 confer such an acceptable mandate on the Mission. It is time it was realized if Saharawi self-determination, as promised by the international community, is to be realised.

i WSRW, Kosmos has begun to drill in occupied Western Sahara, 12 January 2015. < <http://www.wsrw.org/a105x3124>>

ii More information about Kosmos Energy and partners' actions in Western Sahara can be found in the WSRW report "A platform for Conflict", published on 16 October 2014. The report is available via < <http://www.wsrw.org/a106x2985>>

iii Middle East Economic Digest, Morocco told Western Sahara drilling is illegal, 8 January 2015.

iv WSRW, P for Plunder, p.3, available on < http://www.wsrw.org/files/dated/2014-06-11/p_for_plunder_2014_web.pdf>.

v *ibid.* p.12

vi European Commission, EU-Morocco Fisheries Partnership Agreement to enter into Force, 15 July 2014; Available on <http://europa.eu/rapid/press-release_IP-14-836_en.htm>

vii WSRW.org, Commission failed Council and Parliament instructions on human rights, 01.10.2013, <http://wsrw.org/a217x2667>

viii WSRW.org, 267 organisations ask European Parliament to reject fish accord, 05.12.2013, <http://wsrw.org/a105x2742>

ix AP, 10.12.2013, Western Saharans protest EU-Morocco fishing accord, <http://news.yahoo.com/western-saharans-protest-eu-morocco-fishing-accord-204809914--finance.html>

x WSRW.org, Russia once again violates its own fish deal with Morocco, 26.04.2013, <http://wsrw.org/a217x2576>

xi WSRW, Japanese pirates went under the radar, 4 November 2014. Available on < <http://www.wsrw.org/a106x3022>>

xii WSRW, Swiss company to construct solar plants in occupied Western Sahara, 27 November 2014. Available on < <http://www.wsrw.org/a105x3074>>

xiii WSRW.org, Report: Label and Liability, 17.06.2012, http://www.wsrw.org/files/dated/2012-06-17/wsrw_labelliability_2012.pdf