

Briefing 2018: Western Sahara and MINURSO

Summary

1. Ships carrying Moroccan exports of phosphates from Western Sahara were seized, and the cargo of one impounded. The EU – Morocco Fisheries agreement has also been ruled “invalid” due to its inclusion of Western Sahara. Advocates from the EU and South Africa are clear that Moroccan occupation of Western Sahara is illegal.
2. Human rights abuses in Moroccan-occupied Western Sahara have continued. Protestors sentenced in unfair trials; Saharawis beaten and murdered.
3. The Saharawi people’s right to self-determination remains unrealised, a quarter century after the arrival of MINURSO, mandated to organise a referendum.

Recommendations

Our recommendations indicate steps that the UN Security Council could take immediately, and further action that will be essential if the conflict in Western Sahara is to be resolved.

Immediately

1. Grant the MINURSO peacekeeping operation the legal mandate to monitor and report on human rights in territories controlled by the Kingdom of Morocco and the Frente POLISARIO. This body must report its findings directly to the UN Security Council and be a permanent presence until the referendum.
2. Building on the important recognition by courts around the world of the Saharawi’s rights to control their natural resources, demand an end to the extraction of natural resources from Western Sahara through deals which disregard the interests and wishes of the indigenous Saharawi.
3. Consider how MINURSO could be used to support the upholding of international law with regard to the illegal exploitation of Western Sahara’s resources by Morocco.

As soon as possible

4. Set a date for a free and fair referendum to be carried out in Western Sahara with an option for independence on the ballot paper, consistent with the established international legal norm of self-determination.
5. Develop a robust plan under Chapter VII of the UN Charter to enforce the outcome of the referendum, if any of the parties do not respect the decision of the Saharawi electorate.

Overview

Progress towards a political solution to the conflict in Western Sahara remains deadlocked. Following the UN's firm action to oppose Morocco's military adventures in 2016-17, the occupying power has been more circumspect. However, it seems that the full provisions of last year's UN Security Council resolution in regard to the Guerguerat situation have not yet been implemented.

Of note is the recent appoint of Horst Köhler as the UN Secretary-General's Personal Envoy to Western Sahara, and of Colin Stewart as UN Secretary-General's Special Representative for Western Sahara and Head of MINURSO. Mr Stewart's previous UN experience includes five years in missions to East Timor during the transition to independence. There are strong historical and legal parallels between the cases of East Timor and Western Sahara – both European colonies occupied by their much larger neighbours in 1975. In the case of East Timor, the UN was able to successfully organise a referendum with independence as an option.

Another major development in 2017 was the successful application of international law by a court in South Africa to impound Western Saharan phosphate that was being illegally exported. Nevertheless, Morocco continues its efforts to gain economically from the occupation of the territory. And repression and human rights abuses continue in the areas of Western Sahara under Moroccan occupation, as detailed below.

Human Rights

For the Saharawi people, the day-to-day grim reality of stalemate persists. All continue to be denied the right to self-determination which the UN ceasefire agreement promised them some 26 years ago.

Those living under Moroccan occupation face additional denials of their rights. Saharawi human rights organisation Adala contends that there have been several murders of Saharawi citizens by Moroccan settlers in recent years, the latest in November 2017; and that the Moroccan police pay little attention to these cases.¹ And, as has become routine, Moroccan security forces continue to use violence to break up peaceful demonstrations by Saharawis, and restrict their freedom of expression.²

Still no justice for Saharawi political prisoners

In 2016, hopes were raised that the re-trial of the "Gdeim Izik" Saharawi human rights activists (imprisoned after the break-up of the Gdeim Izeik Saharawi protest camp in 2010) might correct the bias and injustice of their first trial. However, by the conclusion of the re-trial in July 2017, it was clear that this was not to be. The heavy sentences from the first trial were largely upheld, after a grossly biased process.

The former President-Rapporteur of the United Nations Working Group on Arbitrary Detention, Professor Mads Andanaes, was present as an observer at the 2017 trial. He comments:

"In the course of the criminal proceedings against "the Gdeim Izik Group", so many serious violations of fair trial guarantees have taken place that the convictions are rendered unsafe. The current report documents grave violations of international law rules on torture and the right to a fair trial.

1 Adala UK (2017) Adala UK demands an independent investigation into the death of Minatu in occupied Dakhla, <https://adalauk.wordpress.com/2017/11/02/adala-uk-demands-an-independent-investigation-into-the-death-of-minatu-in-occupied-dakhla/>

2 Amnesty International (2017) Morocco/Western Sahara 2016/17, <https://www.amnesty.org/en/countries/middle-east-and-north-africa/morocco/report-morocco/>

The convictions were not based on sufficient evidence. The reports by the police and the gendarmerie have been relied on as evidence; the defence has not been able to challenge it. The detainees have been subjected to torture. The overt bias in the proceedings, with judges who could not control their court against a domineering prosecutor and counsel for the victims, was an undignified spectacle...

There is no doubt that the detainees of the Group of Gdeim Izik have been subjected to torture. Morocco is in breach of several articles of the UN Convention against Torture, for torture during arrest and interrogation, Article 1, failure to investigate, Article 12, violation of the right to complain, Article 13, the obligation to provide compensation and reparation, Article 14, reliance of confessions obtained through torture, Article 15, and inhuman treatment in detention, Article 16.”³

Professor Andanaes further notes that this latest case fits into a pattern of human rights violations in the Moroccan security and judicial system, well known to him through his work with the United Nations; and that it is clear that there are special concerns with regards to Morocco’s human rights record in Western Sahara.

It is notable that some of the prisoners called on the United Nations to help. On 20th March 2017 Sidi Abdallahi Abahah, one of the detainees, appealed “for MINURSO to include in its mandate the protection of the Saharawi population”, sentiments echoed the following day by his fellow detainee Abadallahi Toubali.⁴

A clear role for MINURSO

Not only are the ongoing human rights abuses committed by Moroccan forces in Western Sahara are unacceptable in themselves. They concern MINURSO and the United Nation’s work in Western Sahara because, by deepening Saharawi mistrust of Morocco and perpetuating a climate of fear and violence, they can only hinder a peaceful resolution of the conflict.

It is therefore extraordinary that MINURSO is not mandated even to monitor the human rights situation in the territory, let alone “protect the population”. In our recommendations we therefore once again highlight the need for MINURSO to be given a legal mandate to, at the very least, monitor human rights in Western Sahara.

Natural Resources

Moroccan exports of Western Saharan phosphates impounded

Following legal claims to ownership of the cargo made by the Saharawi Arab Democratic Republic (SADR), two ships carrying phosphates mined in Western Sahara were detained by foreign courts in 2017. While the vessel detained in Panama has been released (pending the outcome of the case), the \$5.5m cargo of the NM Cherry Blossom, detained in South Africa, has been impounded. The case was brought by the Saharawi Arab Democratic Republic (SADR). The South African court noted the EU Court of Justice ruling that trade in the resources of Western Sahara was against international law.

Subsequently, another shipping company which has been involved in the Saharan phosphates trade, LT Uglund of the Isle of Man, has announced it will cease carrying any cargo from the disputed territory “until the issue has been settled”.⁵

3 Foreword to Moe, T. S. (2017) Observer Report: the 2017 trial against political prisoners from Western Sahara.

4 Moe, T. S. (2017) Observer Report: the 2017 trial against political prisoners from Western Sahara.

EU Advocate General states EU-Morocco Fisheries Agreement is invalid due to Western Sahara

Following a referral from the UK High Court, Advocate General Wathelet of the EU Court of Justice has released an Opinion stating that:

“the Fisheries Agreement concluded between the EU and Morocco is invalid because it applies to the Western Sahara and its adjacent waters ... the EU has failed to fulfil its obligation not to recognise the illegal situation resulting from the breach, by Morocco, of the right of the people of Western Sahara to self-determination.”⁶

As part of the Fisheries Protocol between the European Union and Morocco, the EU grants Morocco an annual €14 million as support for developing its fishing sector. But the Moroccan government spends the lion's share of that support on expanding the fishing industry in occupied Western Sahara. The Commission is well aware that it is encouraging Moroccan controlled trade in Western Sahara: last year, EC officials visited the territory to conduct technical checks on Moroccan exporters. Moroccan investment in renewable energy is also increasing in Western Sahara, with a substantial part of it going to companies owned by the Moroccan Royal Family.

To be clear, economic development, particularly in the fields of clean and renewable energy, is in itself positive: but not at the expense of the rights of the Saharawi people. An economy led by and profiting a military occupation will not lead to long term prosperity and wellbeing. Instead it will deepen inequalities in Western Sahara, and make the conflict yet harder to resolve.

Conclusions

Unchecked Moroccan power - manifest in violence against civilians, and the illegal exploitation of Western Sahara's resources - brings instability to the territory. Above all, the continued denial of the Saharawi people's right to self-determination creates tension, frustration and “an illegal situation”, in the words of the EU Advocate General.

The UN needs to take action to build confidence among the people of the region, especially the Saharawis, that law and human rights will be respected in the future of Western Sahara. Without that confidence, renewed conflict remains a danger; with it, a peaceful solution becomes a possibility.

Our recommendations indicate action the UN could and should take.

The Western Sahara Action Forum wsaforum.org

The Western Sahara Action Forum (WSAF) is an international advocacy organization focused on Western Sahara. WSAF advocates for the United Nations (UN) to live up to its legal and moral obligations to enable the UN mission there, MINURSO, to organise and implement a free and fair referendum in Western Sahara. Working with a range of governments, NGOs, trade unions, and human rights defenders, WSAF leads international campaigns and lobbying efforts, and provides information and resources for activists and policymakers around the world.

⁵ Lars T. Ugland, Chairman, quoted in Isle of Man shipping company exits Western Sahara until settlement, <http://wsrw.org/a106x3931>

⁶ Court of Justice of the European Union (2018) Press Release 01/18, <https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-01/cp180001en.pdf>