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**THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION
TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN
OCCUPATION**

**Written statement* submitted by the Federation of Associations for the Defence and
Promotion of the Human Rights, a non-governmental organization in special
consultative status**

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

[11 February 2005]

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

THE PROBLEM OF WESTERN SAHARA

The problem of Western Sahara entered the international juridical system's regulatory field in 1956. The problem started with the its qualification of Non-autonomous Territory, art. 73 of the United Nations Declaration, and has become one of the pending cases regarding the implementation of the Self-determination Principle of colonial peoples in which a situation of military occupation is also present, resulting from an armed conflict that reached a cease-fire in September 1991.

The centre of this controversy puts in jeopardy structural principles of the international juridical system (self-determination principle of colonial peoples, the non-use of force principle, pacific resolution of conflicts principle). This juridical reality means that this is not about a de-facto hypothesis that could be solved as an internal matter but instead it is qualified as international, which entails obligations not only for the parties in the conflict, but also for third States and falls into the competency area of the United Nations, thus the latter has to assume its responsibilities on this matter.

Relevant juridical elements are:

A) The Saharai people are in its majority displaced in the refugee camps of Tindouf, Southwest of Algeria. Its precarious situation has been made relevant on many occasions by agencies, both governmental and non-governmental, making emergency announcements in order to provide for the basic food and health needs.

This population is also limited in its communications with family members that live in the Sahara territory, as is evidenced by the different agreements regarding telephone communication and visits between family members.

B) Western Sahara Territory's limits are perfectly drawn geographically and qualified as Non-Autonomous Territory by the institution in charge of carrying out the qualification: the United Nations. This qualification grants an international juridical status, confirmed by international practice, not only in the numerous resolutions of the General Assembly, but also by the International Court of Justice in its judgement of 1975, and by the juridical opinion of the juridical Advisory body of 29th of January 2002, in which it declares in the following terms, regarding the possible effects of the three-party Agreement of Madrid of 14th of November 1975: "The Madrid agreements did not entail a transfer of sovereignty over the Territory nor did they grant to any of the undersigning parties the status of administering power, a status which Spain could not have transferred unilaterally. The administrative authority transfer over the Territory in 1975 does not affect its international status as far as it is a non-autonomous territory".

The international control that brought on the regulation of colonial situations by the Declaration of the United Nations, was surpassed from 1960 with Res. 1514 (XV) "Declaration on the granting of

independence to colonial countries and peoples” which excludes them from international legality, and recognises the right to decide its own future to all peoples settling in a colonial territory according to the parameters set in the Declaration. A right the General Assembly has repeatedly recognised in its resolutions on the Saharai peoples.

Nevertheless, the facts place us before a division of the Non autonomous Territory with the construction of a wall in the eastern part of the Saharai territory, at the sides of which troops quarter in accordance with the 1991 cease-fire, reached after the implementation of the agreement Plan of the UNO Secretary General and the Secretary General of the current African Union.

The Western part of the territory is occupied by Morocco, a situation that has to be qualified as military occupation.

The presence of Morocco, in spite of its invocation of sovereignty and territorial security, cannot unilaterally modify the juridical qualification of the territory, as it could not do it either the Madrid agreement of 1975, as has been pointed out before. Its presence is due to a peaceful occupation in a first stage, the so called “green march”, and afterwards military, as is made evident by the aforementioned agreement plan which recognises the armed conflict situation with the Cease-Fire.

C) The controversy over Western Sahara requires a determined approach by the parties involved: On one side is the Kingdom of Morocco as an occupying power and whose behaviour makes the exercise of the Saharai people’s self-determination right impossible, and on the other hand, the latter, whose status as a State depends on the full exercise of the aforementioned rights and whose territory has been usurped. Both parties in the conflict do not enjoy an equal position.

D) The UN General Assembly keeps Western Sahara on its non-autonomous agenda, which is fundamental to avoid altering the territory’s juridical nature, and the matter is kept under consideration by the Special Committee regarding the implementation of the declaration on the granting of independence to colonial countries and peoples.

From 1992, when an international peace and security keeping mission known as MINURSO was deployed, the “agreement plan” of 1988 and the following agreements connected to it, like the “Western Sahara people’s self-determination peace plan” are kept in the Security Council’s agenda, in spite of being a matter whose central point is self-determination, but, due to the fact that its implementation is impossible because of the use of armed force, it falls within the competency area of the Security Council without it being opposed to the General Assembly competencies.

The juridical frame in which it lies has three main points:

1. The colonial people’s self-determination principle, which entails obligations *erga omnes*, as was recognised by the International Court of Justice in its sentence passed regarding the Matter of Timor in June 1995 and the recent consultative opinion on the consequences of the construction of the wall in the Palestinian territory on July 2004. Regarding its content, two sides of the matter

have to be pointed out: a) Politics, freedom of choice to organize politically, that corresponds to the Saharai people; b) Economic, the exploitation of natural resources within the non-autonomous territory corresponds to the people entitled to the right.

2. The application of the Geneva Conventions of 1949, particularly articles 47 and the following ones of the IV Convention, which regulate the occupying forces' obligations. In this regulatory area it has to be pointed out that the occupation does not mean the transfer of the occupied territory's sovereignty.

3. The pacific resolution of conflicts principle, whose content entails the obligation of a certain behaviour by the parties to the conflict. Regarding its regulatory content it is worth mentioning: acting in the negotiations abiding to the good faith principle, the obligation of not aggravating the situation, and the search of a quick and just agreement through a mechanism that is adequate to the nature and circumstances of the conflict.

In this context, and taking into account the negation of the exercise of the right to self-determination and following occupation of the territory, as well as the lack of a solution to the problem, we ask the UN member States to adopt a firm stance towards the conflict so that the solution be based on the respect of current international law and to implement all mechanisms available to that effect, and we particularly ask for:

A. In the frame of the UN:

The UN should organize the self-determination referendum with all international guarantees in accordance with the Organization's practices on this matter.

Ensure an adequate representation of the POLISARIO Front, as legitimate representative of the Saharai people, in all pertinent UN's system organs.

The condemnation of the exploitation of the Saharai territory's natural resources by Morocco.

The General Assembly and the Security Council should qualify as occupation the situation reigning in the territory of Western Sahara, and thus, it should demand the application of the IV Geneva Convention of 1949, regarding the protection of civilians in times of war, of which Morocco is a party.

The designation of an independent commission to investigate the situation in which the Saharai population finds itself in the occupied territory.

The need for the Security Council to take measures in accordance with its competencies established in Chapter VII of the UN Declaration, taking into account the paralysis affecting the peace process.

All UN bodies, and particularly the Security Council, should take into consideration all necessary measures directed at the withdrawal of Morocco from the Non-autonomous Territory of Western Sahara and the freedom of movement within the latter. And also all necessary measures in order not to aggravate the situation.

B. Measures the States should take:

To guide its behaviour in line with the obligations derived from the international humanitarian law that are applicable to them.

Not recognising the occupation situation in which the Western Sahara territory finds itself in.

To take the appropriate measures, within internal legislation, in order for trading companies not to be able to carry out activities aimed at exploiting natural resources, both in maritime spaces as well as on the land.

To ensure the POLISARIO Front's representation in the group of States.
