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

[12 February 2010]

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

The plundering of fishing resources in Western Sahara

Western Sahara, since 1963 included among the non self-governing territories, pursuant to Chapter XI of the United Nations Charter, was invaded by Morocco in November 1975, following Spanish unilateral withdrawal; the occupation still continues. Western Sahara represents a flagrant example of failed decolonization which has many implications for the life and sovereignty of the Sahrawi people, inter alia, as regards the exploitation of its resources that are mercilessly plundered.

As time passes, the dispossession augments and no one seems to recall that this occupation is totally illegal under the terms of international law. In point of fact, Morocco is not recognized by the United Nations as the Administrative power of the territory and by claiming that Western Sahara is integral part of its territory, Morocco ignores the 1975 International Court of Justice Advisory Opinion¹, the UN Charter and numerous UN Security Council and General Assembly Resolutions², as well as the 2002 juridical opinion by former Under-Secretary-General for legal affairs and Legal Counsel of the United Nations, Hans Corell³, all of which have stressed the current international status of Western Sahara as a Non Self-Governing Territory and the right of the Sahrawi people to a self-determination referendum.

Thus, violation of the Sahrawis permanent sovereignty over its natural resources constitutes a very serious consequence of the illegal occupation compounded with the pretension by some third party countries about the legality of the exploitation and trading of these resources that Morocco is not in a position to exploit, sell or offer licences for.

Among many others, the issue of fishing deserves an in depth analysis since not only is it taking place in violation of international law and clearly hindering the UN efforts to find a solution to the 30 years long occupation, but it represents also an example of the involvement of foreign States in the pillage of Western Sahara's natural resources.

The European Union has signed since several years a series of unfair fishing agreements with Morocco and warnings that these agreements could be applied to waters within the Western Sahara territory were ignored. Already when the 2006 Agreement was initially passed, Sweden expressed its concerns stating that the vagueness of the territorial applicability could allow for European Union to fish in Western Sahara, which would be illegal. At that time, it was still unclear whether fisheries would in fact take place offshore the territory, although such had been the case under previous agreements and in point of fact the current one proved to be no exception.

The 2007 EU-Moroccan Fisheries Partnership Agreement (FPA)⁴ - to be in force for 4 years - has been considered quite controversial since its beginnings and has raised quite a number of questions not only as regards its legality which is inexistent by international law but also because the southern coordinates of the territory under the Agreement were not stipulated, thus leaving to Morocco free how to interpret where the European vessels could fish. According to the Agreement, fishing can take place in "the waters under sovereignty or jurisdiction of the Kingdom of Morocco." Since the EU refused to clearly demarcate the area of application of the Agreement upon signing it, the latter opened for European

¹ Western Sahara, Advisory Opinion. I.C.J reports 1975, p. 12.

² Inter alia: S.C. Res.377 (1975). Res.379(1975) .Ré380(1975). Res.621 (1988). Res.658(1990). Res.690 (1991).Res.725(1991). Res. 47/25(1992). Res. 907 (1994) and G.A. Res.3162 (XXVIII) 1973. Res.3458 (XXX) 1975. Res.31/45 1976. Res.31/22 1977. Res.33/31 1978. Res. 46/67 1991

³ UN doc. S/2002/161

⁴ DG B III-7587/1/rev.1

member countries the fishing in Western Sahara waters – an area over which Morocco has no legal claims being a de facto occupying power and not even appearing on the United Nations' list of administrative countries.

While Morocco has never declared jurisdiction over these waters, in January 2009, the Government of the Sahrawi Arab Democratic Republic (SADR) declared a 200-nautical mile Exclusive Economic Zone (EEZ) in the context of its jurisdiction over its offshore fisheries and mineral and petroleum seabed resources, as provided for under the UN Convention on the Law of the Sea. The government of the SADR appears therefore to be the only body that has ever declared such jurisdiction.

On 9 April 2008, one year after the agreement started and after 7 different written questions had been delivered to the European Commission, it was finally confirmed by the EU Commissioner for fisheries that fishing had indeed taken place also in Western Sahara during the calendar year 2007, under the EU-Moroccan Fisheries Partnership Agreement.

The EU claims that the Agreement is perfectly legal and erroneously bases its claim to legality on an opinion from the former UN Secretary General for Legal Affairs, Ambassador Hans Corell. The author of the opinion, however, has strongly reacted against the misuse of his analysis maintaining that there is no room for such an interpretation of his legal opinion.

In a Conference convened in Pretoria in 2008⁵, Ambassador Corell stated that: “It has been suggested to me that the legal opinion that I delivered in 2002 had been invoked by the European Commission in support of the Fisheries Partnership Agreement. I do not know if this is true. But if it is I find it incomprehensible that the Commission could find any such support in the legal opinion, unless of course the Commission had ascertained that the people of Western Sahara had been consulted, had accepted the agreement and the manner in which the profits from the activity was to benefit them. However, an examination of the Agreement leads to a different conclusion.”

In point of fact, the protocol to the agreement refers to “Morocco’s resources” (Art. 4) and to financial contribution stating that “subject to Art. 6, the Moroccan authorities shall have full discretion regarding the use this contribution is put to”. The same Art.6 prescribes in a long enumeration how the contribution should be allocated⁶, “... but it would be very difficult to identify the Sahrawi in this enumeration. Moreover nowhere in the Agreement mention is made of the fact that Morocco’s jurisdiction is limited by international rules of self-determination.”

Ambassador Corell concludes by saying “Under the circumstances I would have thought that it was obvious that an agreement of this kind that does not make a distinction between the waters adjacent to Western Sahara and the waters adjacent to the territory of Morocco would violate international law”. In this regard, Ambassador Corell also makes reference to the United Nations Convention on the Law of the Sea⁷. In a letter of recommendations by the Norwegian Petroleum Fund’s council to the Ministry of Finance on Ethics, the latter states that both Art. 77 (1) of the Convention and its Annex III “indicate that the rights related to the continental shelf, which in this case seems to belong to the people of Western Sahara⁷, encompass both exploring and exploiting.”⁸

⁵ Conference on Multilateralism and International Law with Western Sahara as a case study. South African Department of Foreign Affairs and University of Pretoria. December 6th, 2008

⁶ See footnote 4

⁷ United Nations Convention on the Law of the Sea. December 10th, 1982

⁸ United Nations Convention on the Law of the Sea. Article 77, par.1

Over and beyond the doubtful legitimacy of the economical and political interests that have led to this Agreement, there can be no doubt about its illegality. The fish stock offshore Western Sahara does not belong to Morocco, when the EU pays Morocco 144 million euros to fish in Western Sahara, it gives money to the occupation power to take out resources of the territory in disregard of the wishes of the resources' legitimate owners. The European Union is simply paying money to the wrong government.

Since July 2009, a legal opinion has been drafted by the European Parliament's legal service on request from the European Parliament's Committee on Development, though the text has been held outside of public knowledge. Contrary to the European Commission stance, the Parliament's legal service concludes that the EU fisheries in Western Sahara under its current shape must stop. The legal opinion was supposed to be discussed on January 28, 2010, in the European Parliament's Fisheries Committee. Already scheduled at the bottom of the loaded agenda of the Committee, the discussion on the legal opinion has been finally dropped off at the last minute and adjourned until the next meeting on 23 February, 2010.

A decision which did not go down well with several other members of parliament, calling for an open debate before the next EU-Moroccan joint committee meeting, to be held in Rabat, first week of February 2010.

It is disappointing that this critical opinion has not been discussed. It would have been both important and interesting to hear the Commission's response to the text. **France-Libertés** totally shares Swedish member of Parliament's question directed to the Commission: "What evidence does the Commission have that the Saharawi people have benefitted from the EU-Moroccan Fisheries Partnership Agreement, and does the Commission deem this proof to be satisfying?"
