



# General Assembly

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## Human Rights Council

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Agenda item 4

Human rights situations that require the Council's attention

### **Written statement\* submitted by the American Association of Jurists, 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.

[15 May 2017]

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

GE.17-08578(E)



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## **Western Sahara: implementation of UNGA resolution 1514 (XV) is of utmost importance**

### **Overview**

Chapter XI of the UN Charter establishes the principles that guide United Nations decolonization processes, including the right to self-determination of all peoples.

On 14 December 1960, the UN General Assembly adopted resolution 1514 (XV), entitled “Declaration on the granting of independence to colonial countries and peoples”, to expedite the progress of decolonization.

In the resolution, the General Assembly proclaimed the necessity of bringing to an end colonialism in all its forms and manifestations and declared that “Immediate steps shall be taken, in [...] Non Self-Governing Territories [...] which have not yet attained independence, to transfer all powers to the people of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire...”

On 27 November 1961, resolution 1654 (XVI) established a Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples<sup>1</sup> which reviews the list of Territories to which the Declaration is applicable and makes recommendations as to its implementation.

On 11 December 1963, the General Assembly decided<sup>2</sup> to include Western Sahara (referred to as Spanish Sahara) in the list of the Non Self-Governing Territories, thus paving the way to the inalienable right to self-determination and independence for the Sahrawi people.

### **The failed mission of the administering Power (Spain)**

Western Sahara was a Spanish protectorate since 1884.

Beginning in 1962, Spain as administering Power, transmitted technical and statistical information on the Territory under Article 73e of the Charter of the United Nations. This information was examined 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 (“the Special Committee”). In a series of General Assembly resolutions on the question of Spanish/Western Sahara, the applicability to the Territory of the Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly resolution 1514 (XV)) was reaffirmed.<sup>3</sup>

In a letter dated 8 September 1966 from the Permanent Representative of Spain to the Chairman of the Special Committee, the Spanish Government expressed its readiness to apply the principle of self-determination in the territory of Spanish Sahara<sup>4</sup>.

In the course of the debate that took place in the Special Committee (between 12 October and 17 November 1966) concerning arrangements for a referendum, Spain reaffirmed its willingness to grant independence to Spanish Sahara<sup>5</sup> and affirmed that the population of the Sahara was entitled to have the first and last word on what happens to their Territory<sup>6</sup>.

On 20 December 1966, in adopting resolution 2229 (XXI), the General Assembly invited the administering Power to determine at the earliest possible date, in conformity with the aspirations of the indigenous people of Spanish Sahara,

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<sup>1</sup> Called also « Special Committee » or « Committee of 24 »

<sup>2</sup> UNGA resolution 1956 (XVIII)

<sup>3</sup> S/2002/161 – par. 5

<sup>4</sup> A/6300/Rev.1 – page 621

<sup>5</sup> A/6300/Rev.1 – par. 200

<sup>6</sup> A/6300/Rev.1 – par. 201

the procedures for holding of a referendum with a view of enabling the indigenous population of the Territory to exercise freely its right to self-determination.

Throughout the years, until 1973, the General Assembly repeated the invitation to the administering Power to create a favourable political climate for the referendum and to take all the necessary steps to ensure that only the indigenous inhabitants exercise their right to self-determination and independence<sup>7</sup>.

Just as the International Court of Justice was going to release its Advisory opinion<sup>8</sup>, following the request made by the General Assembly<sup>9</sup>, the King Hassan II launched the “Green march” and occupy the Non Self-Governing Territory of Western Sahara.

The very same day, the UN Security Council<sup>10</sup> called upon Morocco immediately to withdraw from the Territory of Western Sahara all the participants in the march.

On 26 February 1976, Spain informed the UN Secretary-General that as of that date it had terminated its presence in Western Sahara and relinquished its responsibility over the Territory<sup>11</sup>.

Western Sahara became, and still is today, the only Non Self-Governing Territory that has not an internationally recognized administering Power and that is under the occupation of a third country.

### **15 years of occupation’s war**

Following the retreat of the Spanish forces from the Territory, Mauritania invaded the Territory, from the South.

While Mauritania withdrew from the Territory, upon the conclusion of the Mauritano-Sahrawi agreement of 19 August 1979, the Kingdom of Morocco continued the expansion of its control over the Territory.

On 21 November 1979, the UN General Assembly adopted resolution 34/37 deploring the aggravation of the situation resulting from the continued occupation of Western Sahara by Morocco and the extension of that occupation to the territory evacuated by Mauritania.

In the same document, the General Assembly recognized the Frente Popular para la Liberación de Saguia el-Hamra y de Río de Oro<sup>12</sup>, the Saharawi national liberation movement created in May 1973 in order to resist Spanish colonialism, as the representative of the people of Western Sahara.

The Moroccan occupation’s war (1975-1990) has killed and wounded thousands of Sahrawis, while about 165,000 people were forced to flee to neighbouring refugees’ camps around Tindouf (Algeria); hundreds of Sahrawis have disappeared. Since then, and even in recent times, mass graves have been discovered in the desert. In the meantime, the Kingdom of Morocco constructed a 2,700 km. long sand wall (called Berm) from North to South, which is still guarded by 12,000 soldiers to control and exploit the economically viable part of Western Sahara (fisheries, mines, etc.). Landmines, still operational, were disseminated along the wall.

Following the acceptance by the Kingdom of Morocco and the Polisario Front, in August 1988, of the UN Secretary-General’s settlement proposals, in April 1991, the UN Security Council established the United Nations Mission for the Referendum in Western Sahara (MINURSO) under Chapter VI of the Charter.

<sup>7</sup> UNGA resolution 3162 (XXVIII)

<sup>8</sup> Western Sahara, Advisory Opinion, I.C.J. Reports 1975, p. 12

<sup>9</sup> UNGA resolution 3292 (XXIX)

<sup>10</sup> UN Security Council resolution 380 (6 November 1975)

<sup>11</sup> S/2002/161 – par. 7

<sup>12</sup> Commonly called « Polisario Front »

### **The opposition by Permanent Members in the Security Council to include a Human Rights component contributes to aggravate human rights violations**

MINURSO is the only peacekeeping mission of the UN mandated to implement a fundamental peoples' right. However, due to the refusal of the occupying Power, it does not include a human rights chapter in its mandate.

Furthermore, the Kingdom of Morocco maintains a strict control over the press and it bans the visit of international independent human rights organizations, observers, jurists, lawyers or journalists in the Non Self-Governing Territory of Western Sahara.

Sahrawi people suffer the consequences of the opposition to the inclusion of a Human Rights component in the MINURSO's mandate exerted in the corridors of the Security Council by Permanent Members, resulting in the continuation of impunity and serious violations of human rights. In recent years, various UN Human Rights Council's special procedures, as well as different organs of the Treaty bodies<sup>13</sup>, highlighted the human rights violations committed by the occupying Power in the Non Self-Governing Territory of Western Sahara.

Throughout the last 40 years, the Kingdom of Morocco has managed to avoid the organization of the Referendum in Western Sahara. As documented in a previous written statement<sup>14</sup>, the longstanding position of the Kingdom of Morocco in affirming that the Non Self-Governing Territory of Western Sahara belongs to the Kingdom is contrary to international law, to the 1975 ICJ's opinion and to the numerous decisions of the United Nations. This position seriously calls into question the good faith of the Kingdom in the negotiation process.

### **The mandate of the Human Rights Council**

While the Commission on Human Rights used to have a standing agenda item on the Right to Self-determination, the Human Rights Council has not addressed this item since its establishment in 2006.

In adopting resolution 60/251, the General Assembly reaffirmed the purposes and principles contained in the Charter of the United Nations, including developing friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples.

The General Assembly decided that the Human Rights Council should address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon. It further decided that the work of the Council shall be guided by the principles of universality, impartiality, objectivity and non-selectivity.

### **Conclusion and Recommendations**

By deciding not to let the Sahrawi people to freely exercise their inalienable right to self-determination, the Security Council is failing its mandate and undermines the credibility of the Organization.

If the UN Human Rights Council pays no attention to the situation in the Non Self-Governing Territory of Western Sahara, it may lose its credibility.

The Association of American Jurists calls upon:

- the UN Security Council (particularly its Permanent Members) to consider using other mechanisms, including those provided by Chapter VII of the Charter, to ensure that the people originating from Western Sahara can speedily and freely exercise their inalienable Right to Self-determination;
- the Human Rights Council to seize itself of the situation in the Non Self-Governing Territory of Western Sahara illegally occupied by the Kingdom of Morocco.

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<sup>13</sup> All references are available in document A/HRC/WG.6/27/MAR/2

<sup>14</sup> A/HRC/33/NGO/106