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Point 2 de l'ordre du jour

**Rapport annuel du Haut-Commissaire des Nations Unies
aux droits de l'homme et rapports du Haut-Commissariat
et du Secrétaire général**

Note verbale datée du 6 juillet 2022, adressée au Président du Conseil des droits de l'homme par la Mission permanente de la Namibie auprès de l'Office des Nations Unies à Genève

La Mission permanente de la République de Namibie auprès de l'Office des Nations Unies à Genève et des autres organisations internationales en Suisse a l'honneur de porter à l'attention du Président du Conseil des droits de l'homme et du Haut-Commissariat des Nations Unies aux droits de l'homme la communication ci-jointe du Front POLISARIO, relative à la responsabilité de la communauté internationale en ce qui concerne le processus de décolonisation du territoire non autonome du Sahara occidental (voir annexe).

La Mission permanente de la République de Namibie demande que la présente note verbale et son annexe* soient publiées en tant que document du Conseil des droits de l'homme et distribuées à tous les membres du Conseil au titre du point 2 de l'ordre du jour.

* L'annexe est reproduite telle qu'elle a été reçue, dans la langue de l'original seulement.



Annexe à la note verbale datée du 6 juillet 2022, adressée au Président du Conseil des droits de l'homme par la Mission permanente de la Namibie auprès de l'Office des Nations Unies à Genève

À l'attention des membres du Conseil des droits de l'homme

In 1963, the UN General Assembly (UNGA) included Spanish Sahara in the list of Non-Self-Governing Territory¹, to which UNGA resolution 1514 (XV) entitled “Declaration on the granting of independence to colonial countries and peoples” and UNGA resolution 1803 (XVII) entitled “Permanent sovereignty over natural resources” apply.

In accordance with UNGA resolution 2625 (XXV), Western Sahara has a status separate and distinct of any other State and such separate and distinct status under the Charter shall exist until the people of the Non-Self-Governing Territory have exercised their right of self-determination in accordance with the Charter, and particularly its purposes and principles.

Since 1966, the UNGA invited the administering Power of the Territory, Spain, to determine at the earliest possible date, in conformity with the aspirations of the indigenous people of Spanish Sahara the procedures of the holding of a referendum under UN auspices with a view to enabling the indigenous population to exercise freely its right to self-determination².

In its 1975 Advisory Opinion³, the International Court of Justice concluded that the materials and information presented to it do not establish any tie of territorial sovereignty between the territory of Western Sahara and the Kingdom of Morocco. In November 1975, the UN Security Council in Resolution 380 called upon Morocco to immediately withdraw from the Territory of Western Sahara all the participants in the march.

On 26 February 1976, Spain informed the Secretary-General that as of that date it had terminated its presence in Western Sahara and relinquished its responsibilities over the Territory, without having fulfilled its mandate to decolonise the Territory; a unique case in the history of the UN.

In November 1979, the UN General Assembly in adopting resolution 34/37, while recognizing Frente Polisario as the representative of the people of Western Sahara, deeply deplored the aggravation of the situation resulting from the continued occupation of Western Sahara by the Kingdom of Morocco.

In accordance with UNGA resolution 2625 (XXV), entitled “Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations”, Western Sahara has a status separate and distinct of any other State and such separate and distinct status under the Charter shall exist until the people of the Non-Self-Governing Territory have exercised their right of self-determination in accordance with the Charter, and particularly its purposes and principles.

30 years after the establishment of the UN Mission for the Referendum in Western Sahara (MINURSO), the United Nations is also failing to fulfil its mandate to protect the Sahrawi people, to promote human rights in Western Sahara and to ensure that the indigenous population of the Non-Self-Governing Territory can exercise freely its right to self-determination.

With the Kingdom of Morocco’s refusal on 4 July 2022 to allow the Personal Envoy of the Secretary General, Mr. Staffan de Mistura, to visit the occupied part of Western Sahara, the UN has lost yet another opportunity to verify on the ground the systematic violations of International Humanitarian Law and human rights by the occupying Power, the Kingdom of Morocco.

¹ UNGA resolution 1956 (XVIII)

² UNGA resolution 2229 (XXI)

³ Western Sahara, Advisory Opinion, I.C.J. Reports 1975

Learning on 14 June that the High Commissioner for Human Rights, Madam Michelle Bachelet, would be stepping down at the end of August 2022, the Frente Polisario deeply regrets that she has never considered it necessary to inform the Human Rights Council about the systematic and grave violations of International Humanitarian Law and human rights by the occupying Power of the Non-Self-Governing Territory of Western Sahara, the Kingdom of Morocco.

The Frente Polisario also regrets that, for many years now, the section dedicated to human rights violations in the report of the UN Secretary General to the Security Council is limited to few paragraphs, some of them, recently focusing on alleged human rights violations committed by the Frente Polisario, which virtually equates the occupier and the victims of the occupation.

The Frente Polisario, while denouncing the persistent opposition of the occupying Power and that of its longstanding supporter - France - to include a human rights chapter in the MINURSO mandate, reiterates that the presence of the Moroccan National Council on Human Rights Commissions operating in Dakhla and Laayoune is illegal, since the Moroccan occupation of the Non-Self-Governing Territory of Western Sahara is illegal and the mandate of each National Human Rights Institution is limited to the internationally recognized boundaries⁴ of the respective country.

The Frente POLISARIO also firmly denounces the recent announcement made by the President of the Spanish government, supporting the 2007 Moroccan proposal of “administrative autonomy” of the occupied Western Sahara, under the sovereignty of the Kingdom of Morocco, which disregard the fundamental rights of the Sahrawi people enshrined in the UN Charter, the relevant UN General Assembly resolutions and the very principles of international law.

The Frente POLISARIO deeply regrets that the political organs of the European Union continue to support the illegal plundering of the Sahrawi natural resources, avoiding the enforcement of the European Union Court of Justice’s own decisions.

It is mindful to remember here that Article 103 of the UN Charter provides that *«In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail»*, including the provisions of Chapter XI of the Charter.

Furthermore, in its General comment No. 12 about Article 1 of the International Covenant on Civil and Political Rights, the Human Rights Committee stresses that paragraph 3 is particularly important in that it imposes specific obligations on States parties, not only in relation to their own peoples but vis-à-vis all peoples which have not been able to exercise or have been deprived of the possibility of exercising their right to self-determination. The Committee specifies that the obligations exist irrespective of whether a people entitled to self-determination depends on a State party to the Covenant or not. It follows that all States parties to the Covenant should take positive action to facilitate realization of and respect for the right of peoples to self-determination. The Committee considers that history has proved that the realization of and respect for the right of self-determination of peoples contributes to the establishment of friendly relations and cooperation between States and to strengthening international peace and understanding.

The Frente POLISARIO once more denounces President Trump’s declaration recognizing the Moroccan sovereignty over Western Sahara and the reluctance of President Biden to consider the said declaration null and void.

⁴ The southern and eastern boundaries with the Islamic Republic of Mauritania were established by the “Convention pour la délimitation des possessions françaises et espagnoles dans l’Afrique occidentale, sur la côte du Sahara et sur la côte du Golfe de Guinée”, signed in Paris on 27 June 1900. The Northern boundary of Western Sahara with the territory of the Kingdom of Morocco was delimited by two conventions, the Paris Convention signed on 3 October 1904, and the Madrid Convention signed on 27 November 1912. Its delimitation has been slightly corrected by the Madrid Convention signed on 19 December 1956.

The Western countries policy of double standards in the implementation of Human Rights Law only participate to the debilitation of this branch of law: how to justify that this group of countries are at the forefront of the protection of people's rights in Europe, while in Western Sahara they support militarily, financially and politically the occupying Power, responsible for systematic and grave violations of humanitarian and human rights law?

The Frente POLISARIO calls upon the Office of the High Commissioner for Human Rights to regularly inform the Human Rights Council about the human rights violations in the occupied Non-Self-Governing Territory of Western Sahara.

The Frente POLISARIO also calls upon the Human Rights Council to implement OP5 of UNGA annually adopted resolution entitled "Universal realization of the right of peoples to self-determination"⁵ which «*Requests the Human Rights Council to continue to give special attention to violations of human rights, especially the right to self-determination, resulting from foreign military intervention, aggression or occupation.*»

I would be most grateful if you would bring the present letter to the attention of the members of the Human Rights Council.

Geneva, 6 July 2022

Ms. Omeima Abdeslam

Representative of the Frente Polisario to the United Nations
and other International Organisations in Geneva

⁵ Last one A/RES/76/152 (16 December 2021).