



Submission No 115

**Review of Australia's Relationship with the
Countries of Africa**

Name: Cate Lewis
Vice-President

Organisation: Australia Western Sahara Association

AFRICA ENQUIRY

Second Submission from the Australia Western Sahara Association to the Parliamentary Inquiry into Australia's Relationship with the Countries of Africa

The Africa Enquiry must have expected a difference of opinion between Australia Western Sahara Association and the Kingdom of Morocco, because its chair wrote to the Ambassador to point out AWSA's submission calling for a halt in phosphate imports to Australia.

It may not have expected there to be errors of fact in the Ambassador's submission (No 108). AWSA seeks to correct five of these.

If any member wishes to be given references to show that the International Court of Justice did not regard Morocco's claim to Western Sahara as legitimate please say, but this is well known.

For an up-to-date summary of the issue we recommend :

Anna Theofilopoulou, (who worked closely with James Baker during his negotiations and has since become a seasoned commentator) in The Global Dispatches, February 2011 :

<http://www.theglobaldispatches.com/articles/western-sahara>

1 Under Background p 3

Western Sahara is with two UN bodies: the Decolonization Committee and the Security Council

"After signing the Madrid Accord (November 1975) the treatment of the issue of the Sahara has shifted from Chapter VI ...to Chapter VIII.

Not in the view of the United Nations: Western Sahara remains on the books of the UN Fourth Committee on Decolonization, which considers the subject every year. Western Sahara is also still with the Security Council which oversees the UN Mission to organise a referendum in Western Sahara known as MINURSO and holds peace talks between the parties.

Hans Corell explains in his Legal Opinion of 2002 (para 6) how the Madrid Accord could not take from Spain its legal role as administering power of Western Sahara, nor did it affect Western Sahara's international status as a non-self-governing territory.

2 "Morocco is not an 'occupying power'" p 3

The UN indeed describes Morocco's presence in Western Sahara as an occupation

Morocco's presence in Western Sahara is described as an "occupation" in UN resolutions 34/37 and 35/19 in 1980.

There are 140,000 soldiers on the 2400km long military wall separating the part of Western Sahara held by Morocco from that held by the Polisario Front. The number of Saharawis living under Moroccan rule is considered to be less than 100,000. In addition there is a very large presence in the towns of security forces of various types (gendarmerie, police, national security bodies, urban rapid reaction forces etc).

In a recent interview Stephen Zunes, professor International Politics at San Francisco University said he had travelled to 60 countries around the world and Western Sahara under Morocco was the worst police state he had ever seen.

http://www.democracynow.org/2010/11/15/moroccan_forces_raid_protest_camp_in

3 Hans Corell on exploitation of natural resources p 3-4 Need for both consent of and benefit to the Saharawi people

Hans Corell was shocked that his 2002 UN legal opinion (<http://www.arso.org/UNlegaladv.htm>) on the exploitation of the resources of Western Sahara had been used to justify the EU-Moroccan fishing agreement and took the opportunity of speaking at a conference in the University of Pretoria organised by the South African Foreign Office in December 2008 to point this out:

http://www.wsrw.org/index.php?parse_news=single&cat=105&art=982

He has again made these points in an article this year:

http://www.life-peace.org/sajt/filer/pdf/New_Routes/nr201004.pdf

Corell makes it very clear that what is illegal is the taking of mineral resources in disregard of the wishes and interests of the people of Western Sahara, words which are quoted in Submission 108, p 4. As mentioned in our earlier submission, no 104, last October-November 20,000 Saharawis expressed very clearly in a month long protest that they were against Moroccan exploitation of the natural resources of their country.

Reports written subsequently emphasise this same point (especially that by ASVDH – the Saharawi Association for Victims of Serious Human Rights Violations by the Moroccan State).

4 Phosphate pp 4-5

The argument in the book quoted, by Stephen Zunes and Jacob Mundy on Western Sahara is that (1) Phosphates alone did not motivate Hassan II to invade Western Sahara but (2) phosphate revenues from Western Sahara now help constitute a significant disincentive for Morocco to offer Western Sahara genuine autonomous control over the territory (not to mention independence). Regarding the latter, it is worth noting that Morocco's 2007 autonomy proposal does not offer Western Sahara autonomous control over natural resources but the Moroccan government merely allocates a percentage of its revenues back to Western Sahara.

Nevertheless the ambassador says the revenue from the phosphate from Bou Craa is only a fraction of the total phosphate exports from Morocco, so they should have no objection to a halt in our imports pending settlement of the country's future.

The phosphate company OCP in taking over from the Spanish company, Fos Bucraa sacked many workers in Western Sahara. Today they form 9.5% of the workforce of 1700. The president of the Saharawi organization protecting resources, CSPRON, Sid'Ahmed Lemsiyed, is in Salé prison in Morocco, along with others who took part in the peaceful protest at Gdeim Izik. The Secretary General of the Saharawi General Workers' Union, CSTS, Sidi Ahmed Eddia, reports frequent protests by the former phosphate workers. One called for 5 March, was banned by the Moroccan authorities and the demands of the workers claiming their rights remain unmet. Sidi Ahmd Eddia was hospitalised with heart problems after being struck on the chest during that demonstration. Further peaceful protests outside the Moroccan Ministry of Energy and Mines in El Aaiun continue to be held.

5 Fishing Agreement

The Fishing Agreement between Morocco and the European Union was extended for 1 year on 25 February 2011, to give more time to negotiate a new four-year agreement. Fishing may continue in the expectation that the European Parliament and European Council will approve this course of action.

This is by no means certain as the European Parliament's own legal service issued a statement that it was not legal for the coast of Western Sahara to be included in the agreement with Morocco.

http://www.wsrw.org/index.php?parse_news=single&cat=105&art=1880

As a matter of interest a proposed Agricultural Agreement was held up in the European Parliament in March 2011 waiting for guidance from the Commission as to whether the agreement covers agricultural and fish products from Western Sahara.

On this subject, an article has just been published in the journal of the American Society for International Law entitled: *The pillaging of the Sahara: Criminal liability of European Commission officials resulting from proposed renewal of the 2007 EU-Morocco Fisheries Partnership Agreement*
<http://www.asil.org/accountability/winter_2010.cfm#7>

The Australia Western Sahara Association considers that its case still holds for Australia to cease importing phosphate sold by Morocco but sourced in Western Sahara until the status of the territory is determined.

Postscript

Since making our first submission to the Africa Enquiry a new document has been produced by independent lawyers of the New York City Bar, who take no sides in the dispute, but do seek to uphold international law:

<http://www.nycbar.org/pdf/report/uploads/20072089-ReportonLegalIssuesInvolvedintheWesternSaharaDispute.pdf>

The abstract of the 32-page report reads:

The present report, issued by the Association of the Bar of the City of New York (the "Association") and prepared by the Association's United Nations Committee, examines the legal issues involved in the use by Morocco of the natural resources within the territory of Western Sahara. The report is the result of more than 16 months of research, fact gathering and analysis. While acknowledging the well-known dispute as to the legal status of Morocco's presence within Western Sahara, the report concludes that assuming the legal status most favorable to the Moroccan position – that is, treating Morocco as an administering power in the territory – to the extent Morocco is using natural resources located within the territory of Western Sahara, unless such use is in consultation with and to the direct benefit of the people of Western Sahara, Morocco's use of the natural resources of the territory constitutes a violation of international law.