



Submission No 104

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

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AFRICA ENQUIRY

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

Australia's phosphate imports

The Australia Western Sahara Association (AWSA) presents a short submission to the Parliamentary Enquiry concerning Australia's phosphate imports from Western Sahara.

We regard these imports as unethical and illegal and urge the Australian government to express this view clearly so that the companies may be encouraged to put their imports on hold until the conflict is resolved.

A former Spanish colony, Western Sahara lies between Morocco and Mauritania on Africa's Atlantic coast. Its capital El Aaiun, close to the Canary Islands, is the port where the Moroccan company OCP (Office Chérifien des Phosphates) ships the phosphate to three companies in Australia: Wesfarmers/CSBP, Incitec Pivot and Impact Fertilisers.

However, in terms of international law, the phosphate is not Morocco's to sell. Morocco is the occupying power in this territory, which is still waiting for a vote of self-determination since Spain left without accomplishing this act of decolonisation in 1975.

Background

Morocco's occupation led to a 16-year war, which ended in 1991 when the UN brokered a cease-fire and sent a mission, MINURSO, to organise a referendum of self-determination. The vote has not yet been held and the UN is conducting peace talks between the Kingdom of Morocco and the Polisario Front, the independence movement of Western Sahara, the official representative of the Saharawi people.

The Saharawi Arab Democratic Republic, founded in 1976, has been recognised by 80 countries around the world and is a full member of the African Union. It controls less than a third of the country and largely operates in refugee camps in south-western Algeria. This part is divided from the part under Moroccan control by a military wall and minefields. The phosphate mine of Bou Craa is in the part occupied by Morocco.

International law

In 2002 the UN legal counsel, Hans Corell published a legal opinion pointing out that is contrary to international law to exploit the natural resources of a non-self-governing territory (the technical name for a country in the position of Western Sahara) without the consent of the indigenous people of the territory. It must also be traded for their benefit. Otherwise it must be held in trust until they determine their own affairs.

Consent?

Neither of these provisos is satisfied. The Saharawi people have consistently opposed the sale of their natural resources by Morocco. This was made especially clear last October when 20,000 people walked out of the towns to camp in the desert at Gdeim Izik in protest at their poor living conditions and poor prospects for education and jobs. They wanted the authorities to know they are unwilling to be treated as second-class citizens in their own country, while the occupying power plunders the wealth of their country.

Benefit?

The Saharawis living in the occupied territory affirm they do not benefit from the trade in phosphate. Still less does the other half of the population living in the refugee camps. Investment in infra-structure for the industry itself is scarcely what helps them.

Morocco has been asked to provide proof to the European Parliament that it has invested income from the fishing industry to the benefit of the Saharawis, and it is far from clear it can make the case. Even if it can, the question of consent remains unanswered and the Saharawis vote with their feet at Gdeim Izik is significant.

UN peace process

So long as Morocco is allowed by the international community to benefit from the natural resources of Western Sahara, it has little motive to take the peace talks seriously.

The Australian government officially supports the UN efforts to bring peace to the region, but is undermining these efforts by allowing the trade in phosphate to continue during the peace process.

Ethical investment

Both Wesfarmers and Incitec Pivot have been blacklisted by some ethical investment advisers. Impact Fertilisers' Swiss majority owner, Ameropa received a letter from 8 Swiss parliamentarians in September 2010 (attached as pdf to email).

Other governments lead the way

Governments such as in Norway, Sweden and most recently, Ireland, have taken a stand making clear they expect their companies to act in accordance with international law and the rights of the people of Western Sahara (see Appendix below).

The Norwegian company Yara agreed to stop importing phosphate from Western Sahara when its government said it was in serious breach of fundamental ethical norms in so doing.

We call on the Australian government to support the peace process by making it clear to companies that trade with Morocco in goods sourced in Western Sahara should not be countenanced.

Cate Lewis
Vice President
On behalf of the Australia Western Sahara Association
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Questions in the Irish Parliament

Parliamentary Question No. 317 – Finian McGrath

To ask the Minister for Foreign Affairs the position regarding illegal business practice by Irish companies in Western Sahara; and if he will make a statement on the matter. [Ref No: 3336/11]

Parliamentary Question No. 323 – Maureen O’Sullivan

To ask the Minister for Foreign Affairs the position regarding illegal business practice in Western Sahara; if he will request Irish companies operating there to suspend their business until such time as the Saharawi people benefit from the presence of international companies in their country; if he will make it clear to Irish companies abroad that unethical and illegal business practices will not be accepted by the Government; and if he will make a statement on the matter. [Ref No: 3485/11]

Reply on 25 January 2011 by acting Minister of Foreign Affairs - Brian Cowen

I propose to answer questions 317 and 323 together.

The Government has consistently supported the right to self-determination of the people of the Western Sahara. Ireland has not taken a position on the future status of the territory, so long as that status is decided in a genuine exercise of self-determination.

At present, the Western Sahara is a non-self governing territory. Under international law, the economic resources of a non-self governing territory may only be exploited for the benefit of the people of the territory, on their behalf or in consultation with their representatives.

The Government has consistently made clear its view that any exploration and exploitation activities that proceed in disregard of the interests and wishes of the people of Western Sahara would be in violation of the principles of international law applicable to natural resource activities in non-self governing territories. The Government would expect that any Irish company operating abroad would have due regard to the principles of international law and the rights of the inhabitants of the territory.



SAHARA OCCIDENTAL - WESTERN SAHARA

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TRANSLATION - ORIGINAL FRENCH

For the attention of Mr Andreas Zivy, CEO

Re: importations of phosphate rock sourced in Western Sahara by your Australian subsidiary Impact Fertilisers.

Dear Mr. Zivy,

We have learnt that the firm Impact Fertilisers, based in Tasmania, of which you have recently become the majority shareholder, regularly imports phosphate rock from Western Sahara. The latest shipment pointed out to us was on 14 July in Hobart (Tasmania) on board Star Canopus.

Did you know that these purchases from occupied Western Sahara are highly problematic from an ethical point of view, that they contravene international law and they weaken the efforts of the United Nations to find a peaceful solution to the conflict in the region ?

A referendum of self-determination, organised by the UN, should take place in the former Spanish colony, to allow the population to choose whether it wants independence or integration with Morocco, which has occupied the territory by force since 1975.

To this day, no international organisation recognises Morocco's sovereignty over Western Sahara. Switzerland also upholds the right to self-determination of the Saharawi people as recognised in over 100 UN resolutions.

There is no United Nations embargo on trade with Western Sahara, however, international law lays down that an occupying power can only exploit the natural resources of an occupied territory if it is done in consultation with the local population and is in its interests (*H. Corell legal opinion 2002*¹). In a letter to the President of the Swiss Shipowner Association on the subject of transport of phosphate coming from Western Sahara, Mr. Paul Seger director of the Direction of International Public Law, DDIP, Swiss Ministry of Foreign Affairs, recalled this principle and drew the attention of the shipowners « to the fact that the extraction of natural resources, and notably phosphate rock by Morocco in the above mentioned zone, should take place in conformity with international humanitarian law which appears not to be the case in point of fact. »

The Swiss government expressed its differentiated position concerning trade relations with Morocco, making clear that « from the fact that Switzerland does not recognise the Moroccan annexation, the free-trade agreement between the States of AELE and the Kingdom of Morocco is not applicable to

¹ Letter dated 29 January 2002, addressed to the President of the Security Council by the Deputy Secretary General for legal affairs, Legal Counsel, Security Council document S/2002/161, <http://www.arso.org/Olafir.pdf>

Western Sahara (*extract from the reply of Mr. Martin Zbinden Head of the Free Trade Agreement at the Swiss State for the Economy SECO, April 2007*).

By taking part in the trade of phosphates from occupied Western Sahara, your subsidiary, Impact Fertilisers is profiting from the illegal occupation of the territory and abuses the law. This contributes to undermine the efforts of the United Nations for a peaceful solution to the conflict.

A certain number of companies have, as a consequence, abandoned the importation of the natural resources off Western Sahara for ethical reasons, among them the fertiliser firm, Yara based in Norway and the US-based fertiliser firm, Mosaic.

We ask you as a business conscious of its responsibilities, to take the regional geopolitical context into consideration and to ask your subsidiary, Impact Fertilisers based in Tasmania to abandon the importations of phosphates from Western Sahara so long as the people concerned are not able to exercise their legitimate rights over their own natural resources.

In the expectation of a favourable reply on your part, we present our respectful greetings.

On behalf of ARSO:

Marie-Claire et Emmanuel Martinoli

For the Swiss parliamentary group "Western Sahara":

The President:

Francine John-Calame, Member of the National Council, NE

Co-signatories:

Margret Kiener Nellen, Member of the National Council, BE

Liliane Maury Pasquier, Member of the Council of States, GE

Claude Hêche, Member of the Council of States, JU

Dick Marty, Member of the Council of States, TI

Luc Recordon, Member of the Council of States, VD

Ricardo Lumengo, Member of the National Council, BE

Louis. Schelbert, Member of the National Council, LU

Copies to:

Mr Ambassador Martin Zbinden, Head of the Free Trade Agreement at the Swiss State for the Economy SECO, Berne.

Mr Paul Seger, director of the Direction of International Public Law, DDIP, Swiss Ministry of Foreign Affairs, Berne.