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WSC Newsletter May 2017

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The United Nations and the Courts

The two words – United Nations – bear some examination in relation to the two words – Western Sahara.

Every year the Security Council (UNSC) has the opportunity to take a small step to support the rule of international law in the non-self governing territory of Western Sahara and every year the nations are united in indifference.

It is left to the Saharawi, their representative the POLISARIO Front, and those who support their struggle for self-determination to act - calling for international law to be applied in Western Sahara – for their rights to be respected.

The UN, and specifically, the Security Council has a 'sacred trust' to protect the rights and resources of non self governing territories. For more than 40 years the UNSC has failed to honour its obligations; it has turned a blind eye to the pillage of Western Sahara's natural resources. Now the POLISARIO Front and solidarity organisations are calling on courts to uphold international law and protect the rights of the Saharawi.

Last December the Court of Justice of the European Union heard the POLISARIO Front's case about the legality of European trade agreements with Morocco. The Court decided that under international law the Western Sahara was a separate entity to Morocco and therefore no trade agreements with Morocco could include trade in goods from Western Sahara. WSC UK are also still pursuing a case against the UK trade with Western Sahara under the current EU trade agreements on a similar basis. But even though we are confident of victory we will need governments to act to enforce international law. This is why we were absolutely delighted that for the first time, with the detention of phosphate first in South Africa then in Panama, governments have acted to stop the illegal trade in goods from Western Sahara by Morocco.

If only more countries took action to uphold international law and stop the illegal trade in goods from Western Sahara while the non self governing territory is occupied then we would see progress and the Saharawi would be able to express their inalienable right to self-determination.

In April the Security Council unanimously adopted resolution 2351 (2017) extending the mandate of the United Nations Mission for the Referendum in Western Sahara (MINURSO) until 30 April 2018.

The Council called on the parties to the Western Sahara conflict to resume negotiations under the auspices of the Secretary-General without preconditions and in good faith, in order to facilitate a just, lasting and mutually acceptable political solution.

"Justice Delayed Is Justice Denied". With yet another resolution that avoids the pillage of resources it appears the UN has learnt nothing from the past behaviour of the other oppressors, e.g South African Apartheid. As long as Morocco trade freely and associate freely with the world then why should they change. Resolution 2351 (2017) is another incentive for Morocco to prolong this oppression for as long as possible.

Media release – Communiqué

The detention of a vessel carrying a cargo of phosphate rock destined for Canada from occupied Western Sahara.

Bir Lehlu, Western Sahara (18 May 2017)

The government of the Saharawi Arab Democratic Republic (the SADR) and the Saharawi national liberation movement, the Polisario Front, announced today the detention of a second vessel carrying a cargo of phosphate rock illegally mined and sold from occupied Western Sahara. The motor vessel Ultra Innovation, was detained last night in Panama under court order while transiting the Panama Canal en route to Canada.

The motor vessel is carrying phosphate rock, estimated at 55,000 tonnes and valued around \$6 million USD is considered to be bound for Agrium Inc. through the Port of Vancouver, consistent with a pattern of shipments for the company and a chartering of vessels managed by the Danish firm Ultrabulk A/S. The m.v. Ultra Innovation, part of a fleet of bulk carriers constructed with financial assistance from Canada's Canpotex potash export consortium, of

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WESTERN SAHARA CAMPAIGN UK
The Western Sahara Campaign works in solidarity with the Saharawi people to generate political support in order to advance their right to self-determination and to promote their human rights. Our role is to lobby the UK Government and the EU. You can help us to ensure the UK does not ignore the voice of the Saharawi people.



Follow the news about EU's illegal fisheries in Western Sahara



The EU pays Morocco to fish in occupied Western Sahara.

which Agrium is a part owner, had been tracked prior to its arrival late last month at El Aaun on the coast of Western Sahara. Ultrabulk ships have featured in about one-third of shipments to Agrium since the company announced in September 2011 that it would begin imports from "Morocco".

Mr Emhamed Khadad, member of the Frente Polisario, the Saharawi independence movement, leadership and the senior SADR official responsible for natural resources, remarked that: "We are optimistic this second recourse to applying the law to bring an end to the blatant, theft of a resource belonging to a people under occupation will demonstrate our resolve. The May 1 interdiction of a cargo passing through South Africa and today's step in Panama, are part of ongoing measures to seek justice against the illegal exploitation of the natural resources of Western Sahara and enhance the rule of law in the advancement of self-determination for the Saharawi people."

From the outset of shipments for the company into the Port of Vancouver in the second half of 2013, the SADR government has attempted to engage Agrium, routinely protesting individual shipments and in 2016 rejecting an inadequate human rights evaluation done on request of the company as failing to explain the essential facts of occupation and serious human rights abuses in that part of Western Sahara held by Morocco.

"A basic starting point to thinking about Western Sahara", remarked Khadad, "is the conclusion of the International Court of Justice in 1975 that Morocco does not have 'any' territorial right or claim to Western Sahara. Then add to this the pronouncement of the UN General Assembly that the territory is occupied. There's nothing complex about territorial annexation and a selling of what is stolen property – in the face of our repeated constant protests – out the front door of our house. After years of calling for an end to this trade and seeking creation of United Nations oversight of our resources until its commitment to provide a referendum of self-determination of the Saharawi people is fulfilled, it was time to resort to the rule of law in the international order."

The detention of the two vessels, that in South Africa on May 1 and was bound for the New Zealand importer Ballance Agri-Nutrients Limited (54,000 tonnes; \$7 million NZD), follows a case brought for the Saharawi people in the Court of Justice of the European Union. The case, with an appeal issued by the full court, concluded that Morocco had no territorial rights or claim in Western Sahara, and that a European Union free trade agreement could not extend to operate in the territory. The court particularly noted that the consent of the Saharawi people was needed for the trade or otherwise agreements concerning such things as natural resources.

Khadad explained that: "The Saharawi people wanted their government to act. We could no longer tolerate the myth that the mining and export of phosphate rock was somehow a benefit to that part of our people under occupation inside Western Sahara. And our people in the refugee camps haven't seen anything from the trade. Consider this: A high quality phosphate rock for agricultural fertilizer is sold at a profit and benefits the nutrition of children in countries such as Canada and New Zealand. Meanwhile, the rightful owners of the resource, including Saharawi children, face poor food security in refugee camps. The injustice of this situation could not be more apparent."

It is expected following such legal steps that Saharawi government authorities would take legal action against all the conspirators in the illegal trade of resources of Western Sahara and would pursue individual ship owners for future cargos, including later civil claims against them in specific countries where port calls are made.

The South African court that is deciding on the ownership of a detained phosphate rock shipment from occupied Western Sahara, has set a date to deliver its judgment.

On 18 May, a hearing took place in the High Court in Port Elizabeth, South Africa, to question the parties in [the case of a disputed and detained phosphate rock shipment](#).

The judges concluded that the court will pronounce its conclusion on 9 June. This means that the detention of the cargo on board the bulk vessel NM Cherry Blossom would last in total 40 days, from when the vessel first entered the harbour of Port Elizabeth in order to bunker on 1 May.

Read more.

From one of the lawyers involved:

I'm writing to tell you of something else of value in WSCUK's case that's just emerged.

Like me, you're probably following the affair of the "NM Cherry Blossom" in South Africa. Next Thursday, there's to be a court hearing to review the correctness or lawfulness of the Saharawi authorities acting under a court order on May 1 to 'interdict' the cargo of phosphate in the ship. It's an interim step and not a trial about the claim to ownership of the 54,000 tonnes of phosphate rock.

When the Saharawi Republic's legal team in Cape Town received the response of Morocco's exporting company this week, OCP, they realized that the company will challenge the interdiction by arguing that the lawsuit is 'political' and 'would interfere with the UN Security Council's oversight of Western Sahara'. So the Cape Town lawyers asked: Where are there cases in national courts concerning UN matters in general, for example peacekeeping, and in particular, UN decolonization processes? The UN Council for Namibia lawsuit for exported uranium, in a court in The Netherlands in the 1980s, is an example. So is the Palestine "Brita" case, although one in the European Court (ECJ-CJEU).

But so is your case. No objection was raised to it being pursued, and certainly not by the U.K. government, as impairing or intruding on any UN involvement or role in Western Sahara.

So, because no one else will say it today: Thank you. Your brave legal action continues to serve the cause of justice for the Saharawi people.

EU intends to ignore Court of Justice judgment on Western Sahara trade

The EU Commission is now seeking the EU member states approval to brush aside the judgement of the Court of Justice of the EU, by negotiating a new agreement with Morocco for trade with occupied Western Sahara.

Does the EU have to abide by EU law? That is in essence the question, as the European Commission is now requesting EU Member States for a mandate to re-negotiate a controversial trade deal with Morocco, so as to include goods from the occupied territory of Western Sahara. In the past, Western Sahara products have implicitly been included in that trade, but this was found to be unlawful in a [ruling by the Court of Justice of the EU \(CJEU\) on 21 December 2016](#).

[Read more](#)

Sahara Occidental:

WSC appelle à la libération immédiate des détenus politiques de Gdeim Izik

"The Western Sahara Campaign UK calls for the immediate release of the 24 Saharawi facing an illegal trial in a Moroccan court. The trial relates to incidents which happened at Gdeim Izik in the Western Sahara, a non-self-governing territory which is illegally occupied by Morocco. Until the status of the Western Sahara is resolved through a free and fair referendum of self-determination there can be no legal basis on which the trial can take place so the illegally imprisoned Saharawi should be released immediately - it is as simple as that."

[Read the article](#)

Chaos in Gdeim Izik Trial Continues

The detainees withdrew from the proceedings, along with their defense attorneys, on the 16th of May. Observers explained that new witnesses have appeared out of the blue.

[Read a statement from three international observers to the court case, dated 17 May 2017](#)

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