

The declaration on 21 January 2009 of an Exclusive Economic Zone (EEZ) by the Saharawi Arab Democratic Republic (SADR), the sovereign authority for Western Sahara, confirms its exclusive rights to the oil, gas and fisheries resources offshore of the territory of Western Sahara. Already recognized by over 80 countries, the SADR's declaration of an EEZ is a further step toward full statehood, consistent with international law.

The EEZ provides the legal framework for the SADR's offshore licensing regime, which is currently receiving international bids for offshore oil and gas exploration activities (see <http://www.sadroilandgas.com>). The declaration bears out the illegality of all natural resource-related activities in Western Sahara's waters not authorized by the SADR Government, including those undertaken by Morocco and other foreign interests. It is now recognised widely that fishing by EU vessels in Western Sahara's waters pursuant to the 2005 EU-Morocco Fisheries Partnership Agreement is in flagrant violation of international law (see below).

### **General background**

The area widely referred to as 'Western Sahara' lies on the Atlantic coast of North-West Africa, bordered by Morocco to the north, Algeria to the North-East and Mauritania to the South and South-East. Western Sahara is classed by the United Nations as a Non-Self-Governing Territory, and remains as the last colony in Africa on the agenda of the UN General Assembly Special Committee on Decolonization.

Western Sahara was a Spanish colony from 1884 to 1975, when it was informally referred to as "Spanish Sahara". In 1975, under international pressure for decolonization, Spain withdrew from the territory, and secretly signed the Madrid Agreement, purporting to grant territorial control of Western Sahara to Morocco and Mauritania. A 1975 ruling of the International Court of Justice declared that neither Morocco nor Mauritania had legitimate claims to sovereignty over Western Sahara and that the indigenous 'Saharawi' people must be granted their right to self-determination.

The Frente POLISARIO (the Saharawi liberation movement) proclaimed a Saharawi Arab Democratic Republic (SADR) in February 1976, and engaged in a war against both Morocco and Mauritania, eventually forcing Mauritania to withdraw its claims on the territory. Mauritania recognised the SADR as the legitimate sovereign authority in Western Sahara in 1979. As Morocco forcefully annexed greater portions of Western Sahara, Algeria allowed refugees to settle in the desert near its south-western town of Tindouf.

An armed conflict between the POLISARIO and Morocco continued until 1991, when a ceasefire was brokered on the promise that a referendum on independence would be held soon after, to be carried out by the UN Mission for a referendum on the Western Sahara (MINURSO) pursuant to UN Security Council resolutions 658 (1990) and 690 (1991). Persistent Moroccan objections to UN efforts to establish an electoral roll prevented the referendum from going ahead, and several UN diplomats resigned in frustration at unacceptable Moroccan interference in all aspects of the UN's work. Seventeen years later, Morocco continues to obstruct efforts to hold the referendum, while a generation of Saharawi refugees has grown up in camps in Algeria.

## **The current political situation**

The Saharawi Arab Democratic Republic has been recognised by more than 80 countries, and is a full founding member of the African Union. No country or international organisation recognises Moroccan sovereignty over Western Sahara. Meanwhile, Morocco continues to exploit the territory's natural resources in violation of international law.

UN-mediated efforts to find a solution remain deadlocked. A plan developed by former US Secretary of State James Baker and endorsed by the UN Security Council in 2003 was accepted in good faith as a compromise by the POLISARIO, but came to nothing when Morocco rejected the effort outright. Most recently, a series of UN-led talks in 2007 and 2008 between the POLISARIO and Morocco have failed to produce a breakthrough. UN Secretary-General Ban Ki-moon announced on 7 January 2009 his intention to appoint former US Ambassador to Algeria and Syria, Christopher Ross, as his new Personal Envoy on Western Sahara, with responsibility for facilitating a new round of negotiations between the parties.

In the meantime, there are continued and systematic human rights abuses in the occupied territory. A 2006 report by the Office of the UN High Commissioner for Human Rights (OHCHR) documented Morocco's excessive use of force against peaceful Saharawi demonstrators, along with incidents of arbitrary arrest, harassment, and intimidation of human rights activists. While the report has not yet been made public, it found that almost all human rights violations in the occupied territory stem from the non-implementation of the fundamental right to self-determination. These findings were confirmed by a similarly critical report by Human Rights Watch, published in December 2008. Both reports recommended that the UN Security Council expand the mandate of MINURSO to include a human rights monitoring component, as is the case for all other UN peacekeeping missions.

## **Natural resource issues**

The natural resources of Western Sahara – particularly phosphates and offshore fisheries – continue to be pillaged by Morocco in violation of international law, to the tune of at least US\$2 billion annually (see <http://www.wsrw.org> for more information). Some estimates put this figure much higher.

The awarding by Morocco of oil and gas exploration licenses in Western Sahara to Kerr McGee and Total in 2001 was condemned by the SADR, and triggered a request by the UN Security Council for a legal opinion by then-UN Legal Counsel Mr Hans Corell (Sweden). The opinion, issued in January 2002, found that oil exploration and exploitation activities in “disregard of the interests and wishes of the people of Western Sahara” violate international law applicable to Non-Self-Governing Territories. Total and Kerr McGee withdrew from the territory in 2004 and 2005 respectively, and a number of other operators have indicated they will not become involved in the territory without SADR permission.

Corell stated at a recent international conference that these same legal principles apply in respect of fisheries activities, and confirmed the illegality of the 2005 EU-Morocco Fisheries Partnership Agreement under which EU-flagged vessels (mainly Spanish) fish off the Western Saharan coastline. On this issue, Corell said:

*“As a European, I feel embarrassed. Surely, one would expect Europe and the European Commission – of all – to set an example by applying the highest possible international legal standards in matters of this nature”.*