

STATEMENT OF ULYSSES S. SMITH, ESQ.
ON BEHALF OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK
TO THE UNITED NATIONS SPECIAL POLITICAL AND DECOLONIZATION COMMITTEE

October 6, 2011

On behalf of the Association of the Bar of the City of New York (the “Association”), I would like to extend my gratitude to the Chair of the United Nations Special Political and Decolonization Committee (the “Committee”), Her Excellency Ms. Simona Mirela Miculescu, and to each of the members of the Committee for allowing me the opportunity to address the Committee this afternoon concerning Western Sahara. In addition, I would like to congratulate Her Excellency on her election as Chair of the Committee this past June.

The Association is an independent non-governmental organization with more than 23,000 members in over 50 countries. Since its founding in 1870, the Association has been a dedicated supporter of human rights and a keen monitor of developments in international law, legal issues and norms. The Association’s United Nations Committee (the “UN Committee”), of which I am a member, is tasked with monitoring such developments that are of particular importance to the Community of Nations. One issue of particular concern is that of Western Sahara.

Two years ago, the UN Committee began a study of the legal issues involved in the dispute over Western Sahara in order to give United States policy makers guidance on these issues. In April of this year, the Association issued an initial report, prepared by the UN Committee and focusing on just one of the legal issues involved in the dispute, that concerning the use of the natural resources of Western Sahara. The report was the result of

more than 16 months of research, fact gathering, and analysis undertaken by the members of the UN Committee.

While the UN Committee did not conduct an independent investigation of the facts surrounding the use of the natural resources of Western Sahara, the UN Committee has conducted a thorough review of publicly available documentary evidence. We understand that, at the time of Morocco's entry into Western Sahara in the 1970s, the major natural resources being exploited in the territory were phosphate reserves; in recent years, commercial interests have turned to oil exploration in the territory and fisheries activities in Western Sahara's coastal waters.

As set forth in more detail in the Association's report, we understand that, with respect to oil exploration, the following activities of concern have taken place:

- In 2004, the Moroccan state oil company, ONHYM, and U.S.-based Kosmos Energy and its affiliate Kosmos Energy Offshore Morocco purchased a 30% interest in the Boujdour sub-basin, within Western Sahara; and in 2006, Kosmos entered into a Petroleum Agreement with ONHYM granting it a 75% interest in Boujdour.
- In 2008, Irish energy firm San Leon Energy PLC, through its subsidiary San Leon Morocco Ltd, entered into 8-year licenses with ONHYM regarding the Zag Basin and Tarfaya Onshore basin, within Western Sahara.
- In 2008 and 2009, UK-based Longreach Oil & Gas Ventures Ltd entered into licenses with ONHYM relating to the exploration of the Zag Basin and Tarfaya Onshore block.
- In February 2010, Australian-based DVM International Ltd acquired a 75% working interest in and operatorship in the Tarfaya Offshore Block.

We understand that all of these projects are still in the exploratory phase.

With respect to fisheries activities, we understand that Morocco may have engaged in and may continue to engage in such activities within the coastal waters of Western Sahara, as evidenced by the fisheries treaties Morocco has entered with the European Union (“EU”) and its predecessors, the European Economic Community (“EEC”) and the European Community (“EC”). As just one example, we understand that in 2006, Morocco and the EU entered into a four-year agreement allowing European vessels to fish in “waters falling within the sovereignty or jurisdiction of the Kingdom of Morocco.” While there is no mention of Western Sahara in the treaty, the U.S. Central Intelligence Agency has concluded that fishing under the treaty has occurred in waters off the coast of Western Sahara. Additional examples of fisheries activities are detailed in the Association’s report, as is discussion of the European Parliament Legal Service’s investigation of and report on implementation of the 2006 agreement, which was prepared out of concern that commercial activity under the agreement within Western Sahara’s coastal waters might be in violation of international law.

While the Association’s report acknowledges and does not take a position with respect to the dispute regarding the legal status of Morocco’s presence within the territory of Western Sahara, an issue which of course is very relevant to the present discussion, the report concludes that under any status Morocco could have barring that of sovereign – that is, as either an administering power or an occupying power – Morocco may use the natural resources within the territory of Western Sahara only in so far as such use is in consultation with and to the direct benefit of the people of Western Sahara. Under international law, administering powers and occupying powers have the obligation to ensure that all economic activities in non-self-governing territories do not adversely affect the interests of the peoples

of such territories and in fact serve to benefit those peoples. To do otherwise constitutes a violation of the UN Charter.

Based on the information available to the Association, it appears that, to date, Morocco's activities relating to oil and gas are only exploratory and have not become exploitative. To the extent this is the case, such activities arguably continue to be consistent with Morocco's obligations under international law. However, to the extent such activities are expanded to include extraction of oil and/or gas from the territory, such extraction would be unlawful unless it was done in consultation with and to the benefit of the people of Western Sahara. With respect to the fisheries, the nature and extent of current activities is not clear. Based on the information available to the Association, commercial fishing under the agreements between Morocco and the EU may be occurring within the waters off the coast of Western Sahara. To the extent such activities have occurred or are occurring in Western Saharan waters, such activities must be in consultation with and to the benefit of the people of Western Sahara.

The Association urges the United Nations to investigate and evaluate whether Morocco has used the natural resources of Western Sahara, and if it has, whether Morocco has fulfilled its responsibilities under international law such that its use of the natural resources in the territory has been in consultation with and to the benefit of the local population of Western Sahara.

With many thanks to the Committee for the opportunity to address this issue of great importance to the Community of Nations, I commend the Committee on its important and necessary work.