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**THE GREENWASHING OF AFRICA'S LAST
COLONY:
the Case of Western Sahara**

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Abstract:

After 42 years of occupation, the Western Sahara conflict remains unresolved. As the Moroccan occupation has taken roots in the region without any effective action being taken by international actors, civil society has taken upon itself to bridge this gap. For years, associations have attempted to highlight the illegality of the plunder of Saharawi resources. Thanks to their actions, a number of companies have taken the decision to withhold their investments in sign of protest. However, over the past few years, a new challenge has arisen in the form of the exploitation of renewable resources. Indeed, the legal arguments that had been heavily relied upon until then to demonstrate the unlawfulness of these actions relied on the depletion of Saharawi resources. In the case of renewable resources, the same rational cannot be applied and corporations have attempted to use this loophole to their advantage. This paper will provide an alternative legal reasoning to tackle this new form of exploitation and will then proceed to applying this rational the case study of Siemens and wind farming as well as eco-tourism in the Dakhla Bay.

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Introduction:

“One of the most inhospitable places on Earth, the ex-Spanish territory of Western Sahara might seem the least likely tract of real estate to be coveted by anyone. Yet this bleak land on the western edge of the great Saharan desert has been the theatre of one of Africa’s most bitter and intractable wars”¹

Since their creation in 1975, over 165 000 Saharawi refugees have gathered in the refugee camps of Tindouf in the South of Algeria. Today, most of the Saharawi people actually reside in the camps, dealing with the hostile environment of the desert and the extremely limited opportunities on a daily and long-term basis. Despite the extreme character of the situation, the case of Western Sahara has been branded by many as the “forgotten conflict”. Indeed, the Saharawi situation has been granted a 10/11 of the forgotten crisis assessment index of 2015, with some of the lowest grades relating to media coverage and public aid by capita.²

Unfortunately, the international community over the past half-decade has not risen to the challenge and Western Sahara remains until this day one of the most protracted and blatant failures of the decolonization process. The United Nations Mission in Western Sahara or MINURSO, whose mandate has been consistently renewed every 6 months since 1991, has been unable to fulfil its mission despite the half billion dollars invested in its operation since creation. Considering the absolute lack of cooperation of Morocco in the matter and the clear intention of the Kingdom to maintain that line of behaviour, the mirage of a referendum seems to fade more and more with time. In this context and as the traditional decolonization process appears to have lead the Saharawis in an impasse, other avenues are now being explored.

Natural resources and the legal framework surrounding their exploitation have for a long time been used as a tool in the fight against occupation, the case of Palestine being the most famous one. This route has not only been used by legal practitioners or scholars but also by civil society at large. This is for example exemplified by the Boycott, Divestment, Sanction movement (BDS) which aims at increasing international pressure on Israel *inter alia* through boycott, in order to implement international law in

¹ Tony Hodges *Western Sahara: Roots of a Desert War* (Lawrence Hill and co) 1983

² European Commission, *Forgotten Crisis Assessment 2015*

http://ec.europa.eu/echo/sites/echo-site/files/forgotten_crisis_assessment.pdf

the territory. In the case of Western Sahara, the exploitation of natural resources has also been used by activists as well as legal instances to unlock the Saharawi conundrum. For instance, the international network of organisations “Western Sahara Resources Watch” has made it its mission to uncover cases of exploitation of Saharawi resources and raise awareness regarding the issue. Through this process, WSRW has managed to convince a number of investors to withdraw from the region.³ In the legal realm, after over a decade of legal battling, the highest Court of the European Union has in December confirmed that the Free Trade Agreement between the European Union and Morocco did not apply to Western Sahara.⁴ In doing so, the Court clearly stated that the Saharawi territory could not in any way be considered as being a region of the Moroccan Kingdom and would therefore imply that Morocco is effectively occupying the land. Despite the fact that this judgment should be considered as a victory, one legal issue remains to be tackled: to what extent if any is Morocco entitled to exploit Saharawi resources? Indeed, according to the humanitarian law and more specifically the law regarding the exploitation of natural resources under belligerent occupation, the occupying force appears to have a certain discretion in this regard. However, an issue that is often overlooked lies in the fact that Western Sahara is not only an occupied territory but also a non-self-governing one. In this context, both the framework regarding the exploitation of natural resources and the one of permanent sovereignty over natural resources should be applied. Despite appearing as a minor and technical issue, the addition of the former framework adds a crucial requirement: the consent of the Saharawi people with regards to said exploitation. Therefore, the finite or renewable nature of the resource in question cannot constitute in and of itself a sufficient argument to render the exploitation lawful as it would be the case if the framework of belligerent occupation was the only one to be applied. The first chapter of this paper will focus on this legal issue and demonstrate the validity of the above-mentioned line of reasoning. In addition to legal recourses, civil society activism can be of great help in the struggle for justice. A key element in this battle is information: in a globalised world, business is not limited to national borders anymore. In the case of Western Sahara, a great majority of the resources plundered are destined to be exported. The Moroccan

³ For example, Glendore, cf Western Sahara Resources Watch *Glendore is Departing Western Sahara*, 2005

<http://wsrw.org/a105x3879>

⁴ C-104/16 P *Council v. Front Polisario*

Kingdom has perfectly understood the strategic character of the impression conveyed to customers regarding the origin of the products they purchase. With every sweatshop scandal, conscience consumerism is on the rise. In this context, Morocco and the companies contracted by the Kingdom to exploit Saharawi resources have invested a lot of efforts and funds into creating for themselves a sustainability mask, especially with regards to ecology. By reducing sustainability to (allegedly) environmentally friendly policies and disregarding the social aspect of the notion, Morocco with the support of a number of corporations are effectively proceeding to the greenwashing of their practices. Unpacking and exposing these deceitful marketing propaganda is not only an ethical matter but a practical one too: as the legal and political avenues appear to be blocked, the one of social activism appears to be the most effective and accessible one. By exposing this issue to the public, civil society is hoping to disincentivize the investments of firms in the region by disincentivizing the public at large from purchasing said products. Without profit, there is no business. And without the investment of foreign businesses, Morocco is deprived of its main incentive for the maintaining the occupation.⁵ The second chapter of this paper will expose the greenwashing practices prevalent in the region and focus on the case study of eco-tourism and wind-farming in order to better illustrate the issue.

Lastly and despite not being the main focus of this paper, the writer will shortly examine the potential accountability of corporations actors in order to provide further leads with regards to the possible actions to be taken to tackle the issue.

⁵ Exact and recent numbers appear to be unavailable to the public. However, we know that by the mid-1980's the average cost of war and occupation was estimated at 1.5 million dollars per day. By 2000, the cost of war had reached 1.17 million dollars a day.

Konstantina Isidoros *Awakening protests in Morocco and Western Sahara*, in "African Awakening, the Emerging Revolutions" edited by Firoze Manji and Sokari Akine (Pambazuka Press) 2012, p 125

I. Western Sahara, a historical background:

For the purpose of this paper, Western Sahara will refer to the 80% of the territory under Moroccan control. The remaining 20% (known as the Liberated Territories) will not part of the scope of this paper as the same issues do not arise with regards to those.

Western Sahara is a 266 000 km² piece of land located on Atlantic coast of Northern Africa and neighbouring Morocco to the North, Mauritania to the South, and Algeria to the East. The territory known as a Spanish protectorate (at the time called the Spanish Sahara) since 1884 was expected to follow the path of decolonisation and self-determination as was the case for the majority of the African continent at the time⁶. As early as 1946, the UN decided to address the issue of “non-self governing territories” in the chapter XI of its Charter.⁷ This was followed by the implementation of a series of legal instruments on the same topic⁸, which resulted *inter alia* in the addition of Western Sahara onto the list of non-self governing territories in 1963⁹. As a consequence and compelled by international pressure, Spain reluctantly promised the people of the Spanish Sahara that a referendum was to be held by the end of 1975. Thus, towards the end of 1974, the Spanish authorities took the first steps towards the organisation of a referendum.¹⁰ Meanwhile, Morocco and Mauritania reiterated their claim over the territory, relying on ancient tribal agreements. In order to settle the issue, the International Court of Justice was mandated to give an advisory opinion regarding whether Western Sahara (Rio de Oro and Sakiet El Hamra) was, before the beginning of Spanish colonisation, a territory belonging to no one (*terra nullius*) as well as to

⁶ M. E. Chamberlain, “Decolonization: the fall of the European Empire”, Oxford: Blackwell, 1999

⁷ United Nations, *Charter of the United Nations*, 24 October 1945

⁸ General Assembly Resolution 1514 (XV), “Declaration on the Granting of Independence to Colonial Countries and Peoples”, 14 December 1960, General Assembly Resolution 1541, “Principles which should guide members in determining whether or not an obligation exists to transmit the information called for under Article 73e of the Charter, 15 December 1960”, General Assembly Resolution 1655 (XVI), “The situation with regard to the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples”, 27 November 1961

⁹ United Nations, “The United Nations and Decolonization, Non-Self-Governing Territories”, <http://www.un.org/en/decolonization/nonselfgovterritories.shtml>, last accessed 15.07.17

¹⁰ Roger S. Clark *Western Sahara and the United Nations Norms on Self-Determination and Aggression* in “International Law and the Question of Western Sahara” edited by Karin Arts and Pedro Leite, (International Platform of Jurists for East Timor (IPJET) Publication) 2006, p 48

clarify the nature of legal ties (if any) between this territory and the Kingdom of Morocco and Mauritania¹¹. As a response, the Court stated that:

*“the materials and information presented to the Court show the existence, at the time of Spanish colonisation, of legal ties of allegiance between the Sultan of Morocco and some of the tribes living in the territory of Western Sahara. They equally show the existence of rights, including some rights relating to the land, which constituted legal ties between the Mauritanian entity, as understood by the Court, and the territory of Western Sahara. On the other hand, the Court's conclusion is that the materials and information presented to it do not establish any tie of territorial sovereignty between the territory of Western Sahara and the Kingdom of Morocco or the Mauritanian entity. Thus the Court has not found legal ties of such a nature as might affect the application of General Assembly resolution 1514 (XV) in the decolonization of Western Sahara and, in particular, of the principle of self-determination through the free and genuine expression of the will of the peoples of the Territory.”*¹²

In the hours following the publication of the Court's opinion, the Moroccan King Hassan II launched the “Green March” which consisted of 350000 Moroccans, a great majority of which were part of the military, marching onto Saharawi territory to reclaim sovereignty over this land.¹³ Despite Spain's military power exceeding by far the one of Morocco, the Iberian nation decided to abstain from responding to this invasion militarily. Indeed, the terminal illness of its leader Francisco Franco constituted Spain's main preoccupation at the time and the country was therefore unwilling to engage in any demonstration of force to keep the territory under its control. In addition, Spain suffered significant pressures on the international scene, especially from the United States which appeared to be frightened by the possibility of a “communist” ruled Western Sahara under the auspices of the POLISARIO front. As a consequence and blatantly disregarding the Court's opinion as well as the Charter of the United Nations¹⁴, Spain secretly signed the “Madrid Accords” with Morocco and Mauritania resulting in two thirds of the territory being awarded to the former and other third to the latter.¹⁵ Despite

¹¹ Western Sahara, Order of 3rd January 1975, I.C.J. Reports 6

¹² Western Sahara, Advisory Opinion of 16th January 1975, I.C.J. Reports 12, para 162

¹³ Gilles Perrault, *Notre Ami le Roi*, (Folio) 1992, p 237- 239

¹⁴ United Nations, *Charter of the United Nations*, 24 October 1945

¹⁵ Acuerdo Tripartito de Madrid entre España, Marruecos y Mauritania, 14th November 1975

the invasion being condemned by the UN Security Council, the Moroccan Royal Armed Forces (FAR) were ordered deeper into the territory. With the support of large-scale aerial bombardment, the actions perpetrated by the FAR resulted in the exile of over half of the Saharawi population into neighboring Algeria.¹⁶ The Mauritanian troops joined the war efforts two months later and invaded the southern part of the territory which they had been illegally granted under the Madrid Accords. Simultaneously, the POLISARIO declared the independence of the Saharawi Arab Democratic Republic (SADR).¹⁷ With Algerian and Libyan support, the POLISARIO front managed to defeat Mauritania by 1979 which later surrendering the southern third of the territory, which will later be annexed by Morocco¹⁸. The guerilla carried on between the Moroccan forces and the POLISARIO front, which by 1982 had liberated nearly 85% of the territory. However over the course of the next four years and with significant French and American support in the form not only of training but also napalm and cluster-bombs, the Moroccan army managed to overturn the situation and took over the great majority of the territory, including most major cities and natural resources, once again.¹⁹ The occupied territories are until this day bordered by a wall (muro de la vergüenza or wall of shame), which was built with the assistance of France, the United States and the United Kingdom and is heavily mined and guarded.²⁰ Indeed, over two thirds of the FAR is today stationed along the wall that grew to be 2720 km long, and is the second longest wall in the world after the Great Wall of China.²¹ In order to secure control over the territory even further, Morocco has implemented a system of subsidies and other numerous benefits in favour of Moroccans settling in the region, most of which originate from the South of Kingdom. In a context such as the one of these regions where economic opportunities are extremely sparse and prospects of a better

¹⁶ Stephen Zunes *Western Sahara, Resources, and the International Accountability* (Global Change, Peace and Security) 2015, p 286

¹⁷ 27th February 1976

¹⁸ Raphael Fisera, *A People vs Corporations ? Self-Determination, Natural Resources and Transnational Corporations in Western Sahara* (Master's Thesis University of Bilbao) 2003, p 14

¹⁹ Raphael Fisera, *A People vs Corporations ? Self-Determination, Natural Resources and Transnational Corporations in Western Sahara* (Master's Thesis University of Bilbao) 2003, p 1

²⁰ El Observador, *Una obra gigantesca para un fracaso estratégico: una autentica ruina, El muro de la Vergüenza Marroquí*,
<http://www.revistaelobservador.com/images/stories/REVISTAS/52/10EOBSAHARA4042muro.pdf>,
 last accessed 15.07.17

²¹ El Observador, *Una obra gigantesca para un fracaso estratégico: una autentica ruina, El muro de la Vergüenza Marroquí*,
<http://www.revistaelobservador.com/images/stories/REVISTAS/52/10EOBSAHARA4042muro.pdf>,
 last accessed 15.07.17

future even rarer, the success of these policies is not surprising. By 1990's Moroccan settlers outnumbered indigenous Saharawis two to one.²² Despite numbers being extremely difficult to come by and their reliability often being questioned, it is believed that settlers nowadays make up two thirds of the population living in the Occupied Territories.²³

After lengthy negotiations, both parties finally agreed to a settlement plan in 1988 which was approved by the UN Security Council in 1991. This plan gave birth to a new UN body, the United Nations Mission for the Referendum in Western Sahara (MINURSO), which was mandated *inter alia* to organise the holding of a referendum including an option for independence as well as to monitor the cease-fire that was rendered effective later the same year.²⁴ As a starting point, the MINURSO attempted to identify the individuals that would be entitled to participate in the soon to come referendum.²⁵ Constituting a list of individuals who would be eligible to cast ballot was not easier than agreeing on the criteria. By then, an important number of settlers were already living in the region and Rabat encouraged them to enlist onto the United Nations' list in order to fix the result in favour of Morocco. As a consequence, the census was only completed by December 1999. All throughout, the UN in each resolution regarding the issue regretted that "the parties continue to hold divergent views regarding the appeals process, the repatriation of refugees and other crucial aspects of the plan"²⁶ In addition, James Baker as the Personal Envoy of the UN Secretary

²² Stephen Zunes *Western Sahara, Resources, and the International Accountability* (Global Change, Peace and Security) 2015, p 287

²³ Whitney Sheltte, *Western Sahara's Stranded Refugees Consider Renewal of Morocco Conflict* (Washington Post, republished in The Guardian)
<https://www.theguardian.com/world/2015/jan/06/morocco-western-sahara-referendum-delay> last accessed 15.07.17

²⁴ Security Council Resolution 690, "The Situation Concerning Western Sahara", 29th April 1991
 "MINURSO was originally mandated to:

- Monitor the ceasefire;
- Verify the reduction of Moroccan troops in the Territory;
- Monitor the confinement of Moroccan and Frente POLISARIO troops to designated locations;
- Take steps with the parties to ensure the release of all Western Saharan political prisoners or detainees;
- Oversee the exchange of prisoners of war ([International Committee of the Red Cross](#));
- Implement the repatriation programme ([United Nations High Commissioner for Refugees](#));
- Identify and register qualified voters;
- Organize and ensure a free and fair referendum and proclaim the results."

MINURSO, United Nations Mission for the Referendum in Western Sahara, MINURSO Mandate, <http://www.un.org/en/peacekeeping/missions/minurso/mandate.shtml>, last accessed 15.07.17

²⁵ United Nations Mission for the Referendum in Western Sahara (MINURSO), MINURSO Background, last accessed 3rd July 2017, <http://www.un.org/en/peacekeeping/missions/minurso/background.shtml>

²⁶ Raphael Fisera, "A People vs Corporations? Self-Determination, Natural Resources and Transnational Corporations in Western Sahara", Master's Thesis University of Bilbao, 2003, p 15-16

General, was mandated to provide for a political solution leading to self-determination. This was done through the “Peace Plan for Self-Determination of the People of Western Sahara”.²⁷ The first draft called Baker I revoked the possibility for independence and would only grant Western Sahara with a level of autonomy as a region of the Moroccan Kingdom. Although France and the United States expressed their support for this solution, the POLISARIO front, Algeria and the international community at large rejected the plan as it would have led to abrogation of previous United Nations Resolutions by revoking the right of Saharawis to self-determination.²⁸ The second draft, Baker II constituted a compromise in that the local elections would be held in order to establish legislative, executive and judicial bodies that would temporarily insure the governance of the region for the four to five years to come. Following this period, a referendum determining the permanent status of Western Sahara would be held. The controversial part of this plan resides in the voting list : in fact, while the local bodies would be elected by voters registered on the 1999 UN list and the UNHCR repatriation list, the referendum on the other hand would include every individual having resided continuously on the territory since the 30 December 1999. This would include Moroccan settlers who would clearly outnumber the indigenous Saharawis. Baker II also included clauses relating to the release of all prisoners of war as well as the demilitarisation of the partition wall.²⁹ After initially agreeing to these arrangements, Morocco ended up not only rejecting the Plan but made it clear that it was not willing to engage in any form of negotiation in which Saharawi independence was made an possibility. The only compromise envisaged by the monarchy consisted of granting partial autonomy to the territory within the boundaries of Moroccan sovereignty, in a form that would be similar to a federation with Western Sahara as the Southern Provinces.³⁰ In spite of this situation, the UN Security Council has consistently renewed the mandate of the MINURSO ever since on a bi-annual basis without ever modifying its content.³¹ In the light of those events, the failure of the UN

²⁷ Toby Shelley, “Behind the Baker Plan for Western Sahara”, Middle East Research and Information Project, 1st August 2003, last accessed 3rd July 2017, <http://www.merip.org/mero/mero080103>

²⁸ Stephen Zunes, *Western Sahara, Resources, and the International Accountability* (Global Change, Peace and Security) 2015, p 290

²⁹ Toby Shelley *Behind the Baker Plan for Western Sahara* (Middle East Research and Information Project), 1st August 2003, last accessed 3rd July 2017, <http://www.merip.org/mero/mero080103>

³⁰ Autonomy Plan, The Kingdom on the Mover, “The Autonomy Plan for Sahara” <http://autonomy-plan.org/the-autonomy-plan-for-sahara> last accessed 15.07.17

³¹ United Nations, Meetings Coverage and Press Releases, Security Council Meeting 7933RD (night), *Security Council Extends Mandate of the United Nations Mission for Referendum in Western Sahara*

and of the MINURSO are particularly striking ; after over 40 years of occupation, the situation remains unsolved with over 165 000 individuals still residing in the Tindouf refugee camps, an over militarised border and a total absence of consensus between the two parties. However not everything can be blamed on the UN body who can only act within the limits of its mandate. The significance of lack of international support and interest in the matter should not be overlooked ; the consistent French support of the Moroccan monarchy leading to extreme delays in the negociation as well the systematic use of its veto powers in the Security Council to any resolution that would upset Rabat, such as the expansion of the MINURSO's mandate to human rights monitoring in 2010, has played a very significant part in the equation.³²

Unanimously Adopting Resolution 2351, 30th April 2018

<https://www.un.org/press/en/2017/sc12807.doc.htm> last accessed 15.07.17

³² Raphael Fisera, *A People vs Corporations ? Self-Determination, Natural Resources and Transnational Corporations in Western Sahara* (Master's Thesis University of Bilbao) 2003, p 17-18

II. Legal framework: occupied and/or non-self governing territory?

This chapter will demonstrate how two legal frameworks, namely the one related to non-self governing territories as well as the one related to belligerent occupation apply to the case of Western Sahara. In addition, the relation between those two frameworks will also be explored.

A. Western Sahara as a Non-Self-Governing Territory:

i. The Legal Framework of Non-Self-Governing Territory:

The law related to non-self governing territories finds its sources in article 22 of the Covenant of the League of Nations³³ which for the first time mentioned the sacred trust of civilisation to guarantee the well being and development of dependent peoples. No timeline was associated with the notion and the lack of emphasis on the fact that such measures were temporary in nature in addition to the absence of a clear outcome with regards to the future of these territories and peoples was clearly problematic. In the following years and during the inter-war period, the establishment of an accountability system was advocated for in progressive spheres while some territories such as British India saw the birth of semi-self governing institutions.³⁴ Despite those minor evolutions, the core of the issue remained unchanged.

³³ “To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilisation and that securities for the performance of this trust should be embodied in this Covenant.

The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who by reason of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League. (...) A permanent Commission shall be constituted to receive and examine the annual reports of the Mandatories and to advise the Council on all matters relating to the observance of the mandates.”

Covenant of the League of Nations, 1919, article 22

³⁴ J. F Engers, *From Sacred Trust to Self Determination* (Netherlands International Law Review, Vol. 24 (1-2)) 2009, p 85

Max Planck *Encyclopedia of Public International Law* (Oxford Public International Law) “Non-Self-Governing Territories”, Makane Moise Mbengue, last update February 2013

James Crawford *Creation of States in International Law* (Oxford: Oxford University Press) 2006, p 602

A new step was taken in 1945 at the San Francisco Conference regarding the codification of the concept of accountability in Chapter XI of the Charter of the United Nations, which was incorporated as declaration.³⁵

“Chapter XI contains all the notions bruited about in the inter-war years, in particular a measure of international accountability for colonial governance and the promotion of the goal of self-government. It should be noted that the wording of this instrument is particularly ambiguous as it refers to “territories whose people have not yet attained a full measure of self government” which are to be “the territories to which this Chapter applies” and opposes those to “Members of the United Nations which have or assume responsibilities for the administration of such territories” or “metropolitan areas”.³⁶ We have inferred from such phrasing that the Chapter and the principle it contains are therefore not to be applied to peoples within specific nations but only to situations akin to colonisation.”³⁷

At this stage, the inclusion of countries on the list of non-self governing territories was made voluntary through the Secretary-General requesting information about the territories under paragraph article 73 e.³⁸ Seventy-two territories administered by eight different States were mentioned in resolution 66 (I) as territories with regard to which information under Article 73e had been or would be submitted. Following the admission of Spain and Portugal to the United Nations in 1955, the topic of their colonial territories was raised. As both countries refused to voluntarily submit information under article 73 e., the General Assembly took the decision to specify criteria in order for a non-self-governing territories to qualify as such in resolution 1541 (XV). As a consequence, the United Nations then went onto determining itself and with the help those criteria what that particular territories fell within Chapter XI. After lengthy negotiations, Spain eventually agreed to comply with Assembly recommendations and recognised Western Sahara to be a non-self governing territory which it administered.³⁹

³⁵ Charter of the United Nations, Chapter XI, article 73-74, 26th June 1945

³⁶ J. F Engers *From Sacred Trust to Self Determination* (Netherlands International Law Review, Vol. 24 (1-2)) 2009, p 85

³⁷ J James Crawford *Creation of States in International Law* (Oxford: Oxford University Press) 2006, p 607

³⁸ Charter of the United Nations, Chapter XI, article 73.e., 26th June 1945

³⁹ James Crawford *Creation of States in International Law* (Oxford: Oxford University Press) 2006, p 609

As the geopolitical situation changed so rapidly on an international scale, Chapter XI soon became partially obsolete and lost its progressive and avant-gard status. In order to remedy this issue, the General Assembly adopted in 1960 Resolution 1514 or the “Declaration on the Granting of Independence to Colonial Countries and Peoples” which proclaims the right to self-determination and independence.⁴⁰ This idea was consolidated by the adoption of Resolution 2625 “Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations”.⁴¹ The change should not be mistaken to solely be an terminological one; indeed the this area evolved from being focused on the paternalistic duty of the benevolent coloniser to the right of the peoples in question to be in charge of their own future. This change in the terminology employed thus clearly reflects an ideological shift.

ii. Is Western Sahara a Non-Self-Governing Territory?

The fact that Spain was Western Sahara’s administering power is highly uncontroversial: as previously mentioned, the Spanish Kingdom itself, following the United Nations’s request recognised the matter.⁴² However, Spain repetitively stated that it had surrendered its responsibility in the territory when it recalled its troops in 1975 and signed the Madrid Accords.⁴³ This claim has however proved to be controversial as the agreement appears to violate a number of national laws in addition to international ones. Indeed, the “Law regarding the decolonization of the Sahara”⁴⁴, which authorized the Spanish government to start negotiations with regards to the decolonization of the territory was signed on the 19th of November and published the following day. However, the Madrid Accords⁴⁵ which assigned Western Sahara to Morocco and Mauritania was signed on the 14th of the same month; as the “Law

⁴⁰ General Assembly Resolution 1514 (XV), *Declaration on the Granting of Independence to Colonial Countries and Peoples* 14th December 1960

⁴¹ General Assembly 2625 *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States* 24th October 1970

⁴² Indeed, Spain willingly provided the information required under article 73.e.

United Nations Report of the Committee on Information from Non-Self-Governing Territories, Official Records: Eighteenth Session, Supplement No. 14 (A/5514), Annexes 3

⁴³ 20 minutos, *Trinidad Jimenez: “España no tiene responsabilidades en el Sahara Occidental”*, <http://www.20minutos.es/noticia/875537/0/trinidad-jimenez/sahara/responsabilidad/> , last accessed 15.07.17

⁴⁴ Bolletin Oficial del Estado, Numero 278, 20 Noviembre 1975, <https://www.boe.es/buscar/doc.php?id=BOE-A-1975-23743>, last accessed 15.07.17

⁴⁵ Acuerdo Tripartito de Madrid entre España, Marruecos y Mauritania, 14th November 1975

regarding the decolonisation of the Sahara” was obviously meant to have effects pro-futuro and not retroactively, the Spanish government not in the capacity of consenting on the issue was on the 14th of November. As a further illustration of the illegal nature of the operation, it was purposely concealed by the minister Carro as he stated that no agreement had been signed with Rabat.⁴⁶ In addition, in order to ratify treaties that would in any way affect the sovereignty or the territorial integrity of the Kingdom, an authorisation of the Chamber in the form of a law is required, followed by the approval of the Chief of State.⁴⁷ An argument could be made for the non-application of this procedure to the present case as the Agreement specifies the transfer of the administering power and not the sovereignty over the territory as such.. In that case, article 14. II.⁴⁸ of the same legislation would apply, requiring the Chamber to be provided with information regarding the agreement. In this case, the Agreement as well as the negotiations were maintained a secret and was never published in the Boletín Oficial del Estado as it is required by the Constitution. Thus, it appears to be clear that the Madrid Agreement severely violates the Spanish Law as in force at the time. In addition, this piece of legislation also contradicts international regulations, as Spain did not in any way have the capacity to legally transfer its administering powers. Indeed and as stated in the United Nations Charter, an administering power can only transfer its administrative power to the then Trusteeship Council.⁴⁹ The Madrid Agreement is therefore in direct violation of the UN Charter. Furthermore, the UN resolution⁵⁰ confirmed by the 1975 opinion of the Court⁵¹ makes it extensively clear that the decolonisation of the Spanish Sahara is to happen through a referendum fostering self-determination. Despite an attempt of the drafters to argue that said Accords were “in conformity with (self) determination and in accordance with the negotiations advocated by the United Nations”⁵², the fact that no mention of a referendum was made appears to add another layer of inaccuracy of the statement. In this context, the fact that Spain has effectively relinquished its power and duty over the territory through the Madrid

⁴⁶ Carlos Ruiz Miguel *Los Acuerdos de Madrid, Inmorales, Ilegales y Políticamente Suicidas*, 6th April 2006, <http://gees.org/articulos/los-acuerdos-de-madrid-inmorales-ilegales-y-politicamente-suicidas>, last accessed 15.07.17

⁴⁷ Ley Constitutiva de las Cortes, art. 14.I, 17th July 1942

⁴⁸ Ley Constitutiva de las Cortes, art. 14.II, 17th July 1942

⁴⁹ Charter of the United Nations, Chapter XII, *International Trusteeship System*, 26th June 1945

⁵⁰ Security Council Resolution 690, *The Situation Concerning Western Sahara*, 29th April 1991

⁵¹ Western Sahara, Advisory Opinion of 16th January 1975, I.C.J. Reports 12, para 162

⁵² Acuerdo Tripartito de Madrid entre España, Marruecos y Mauritania, 14th November 1975, para 2

Accords is clearly inaccurate and Western Sahara remains a non-self governing territory as confirmed by the fact that it is still present on the United Nations list.

iii. Non-Self-Governing Territories and Natural Resources: Permanent Sovereignty over Natural Resources:

The concept of permanent sovereignty over natural resources (PSNR) is often interpreted as being the economic arm of the right to self-determination. The establishment of this doctrine was pushed forward by a number of newly decolonised States who found the political aspect of self-determination to be insufficient to foster the development of their respective nations.⁵³ “The principle of PSNR builds on traditional state prerogatives such as territorial sovereignty and sovereign equality of states. This permits states to freely determine and apply laws and policies governing their people and territory under their jurisdiction and choose their own political, social and economic systems.”⁵⁴ Despite not mentioning PSNR explicitly, the UN Charter contains several provisions, particularly the ones related to non-self governing territories, that are relevant to the development of the concept.⁵⁵ For the first time in 1952, the United Nations General Assembly in its Resolution 523 asserted that :

*“the underdeveloped countries have the right to **determine freely** the use of their natural resources and that they must utilise such resources in order to be in a better position to further the realisation of their plans of economic development in accordance with their national interests, and to further the expansion of the world economy” ; “commercial agreements shall not contain economic or political conditions violating the sovereign rights of the under-developed countries, including **the right to determine their own plans** for economic development”.*⁵⁶ *The same year, another resolution recognised the “rights of each country to use and exploit their natural wealth, as an essential factor of independence.”*⁵⁷

⁵³ Jane A. Hofbauer, *The Principle of Permanent Sovereignty over Natural Resources and its Modern Implications* (LL.M. Master Degree Thesis, Faculty of Law University of Iceland) 2011, p 2, https://skemman.is/bitstream/1946/4602/1/Jane_Hofbauer.pdf, last accessed 3rd of July 2017

⁵⁴ Jane A. Hofbauer, *The Principle of Permanent Sovereignty over Natural Resources and its Modern Implications* (LL.M. Master Degree Thesis, Faculty of Law University of Iceland) 2011, p 2 https://skemman.is/bitstream/1946/4602/1/Jane_Hofbauer.pdf, last accessed 3rd of July 2017

⁵⁵ Charter of the United Nations, Chapter XI, Preamble para 2, para 4, article 1(2), article 55, article 73

⁵⁶ United Nations General Assembly Resolution 523 (XVII), *Integrated Economic Development and Commercial Agreement*, 12th January 1952, para 1 a. and b.

⁵⁷ United Nations General Assembly Resolution 626 (VII), *Right to Exploit Freely Natural Wealth and Resources* 21st December 1952, para 1

Furthermore, both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights include guidance regarding the fact that “all peoples may, for their own ends, **freely dispose of their natural wealth** and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law”⁵⁸. In order to facilitate the implementation of the doctrine and outline its scope, the creation of a UN body, namely the Commission on Permanent Sovereignty over Natural Resources, was established by the UNGA.⁵⁹ A few years later, this resulted in the birth of UNGA Resolution 1803 commonly known as the Natural Resources Declaration.⁶⁰ This broad reaching document not only defines the concept of PSNR but also breakst down the concept and defines its scope. The Declaration grants permanent sovereignty to peoples and nations and emphasises that this right ‘must be exercised in the interest of their national development and of the well-being of the people of the State concerned’⁶¹. In addition, this legal instrument asserts that with regards to exploration, development and disposition of natural resources should be in conformity with the rules and conditions which the peoples and nations freely consider to be necessary. Therefore, a foregin investor is bound by the desire of the people in question with regards to the authorization, restriction or prohibition of its activities.⁶² Restrictions regarding the treatment of foreign investors are also touched upon. “Para. 3 Natural Resources Declaration determines that when authorization is granted, the imported capital and the earnings on it shall be governed by national legislation and international law. It also lays down the principle that ‘the profits derived must be shared in the proportions freely agreed upon’ with due care for the State’s sovereignty over its natural resources. Para. 4 Natural Resources Declaration deals with the hotly debated issue of nationalization, expropriation, or requisition.

⁵⁸ United Nations General Assembly, International Covenant on Civil and Political Rights, 16th December 1966, article 1(2)

United Nations General Assembly, International Covenant on Economic, Social and Cultural Rights, 16th December 1966, article 1(2)

⁵⁹ Jane A. Hofbauer, *The Principle of Permanent Sovereignty over Natural Resources and its Modern Implications* (LL.M. Master Degree Thesis, Faculty of Law University of Iceland) 2011, p 2, https://skemman.is/bitstream/1946/4602/1/Jane_Hofbauer.pdf, last accessed 3rd of July 2017

⁶⁰ United Nations General Assembly Resolution 1803, *Permanent Sovereignty over Natural Resources*, 14th December 1962

⁶¹ United Nations General Assembly Resolution 1803, *Permanent Sovereignty over Natural Resources*, 14th December 1962, para 1

⁶² United Nations General Assembly Resolution 1803, *Permanent Sovereignty over Natural Resources*, 14th December 1962, para 2

Public utility, security, or national interest can serve as the grounds for such taking of property, subject to payment of ‘appropriate’ *compensation*. With regard to the settlement of disputes on compensation, para. 4 Natural Resources Declaration recognizes the ‘exhaustion of local remedies’ rule, but provides upon agreement for international adjudication and *arbitration*. In this way it sought to reconcile the national standard proclaimed in the Calvo Doctrine advocated by the developing countries with the international minimum standard supported by the industrialized countries.”⁶³ In addition, the Resolution reasserts the crucial role of the concept of sovereign equality of States in order for the principle of sovereignty over natural resources to be adequately protected.⁶⁴ Furthermore, the international co-operation for economic development towards developing countries must be aimed at furthering independent national development and must be based upon respect for the doctrine of sovereignty over natural resources.⁶⁵ Specific mention is also made to the fact that violation of the principle of permanent sovereignty over natural resources is contrary to the spirit and principles of the Charter of the United Nations as well as a hindrance to the development of international cooperation and the maintenance of peace.⁶⁶ Finally, paragraph 8 states that “foreign investment agreements freely entered into by or between sovereign States shall be observed in good faith; States and international organizations shall strictly and conscientiously respect the sovereignty of peoples and nations over their natural wealth and resources in accordance with the Charter and the principles set forth in the present resolution.”⁶⁷ This Charter and the rules and restrictions it contains are until this day considered to be the blueprint of the doctrine of permanent sovereignty over natural resources. For the sake of concision and despite acknowledging that other issues could be relevant to the discussion, this paper when assessing the legality of an action with regards to this framework will focus on the issue of consent, as it permeates the entire Declaration and is therefore central to the notion. As the information required to assess whether a violation of most of the previously

⁶³ Max Planck, *Encyclopedia of Public International Law*, (Oxford Public International Law), “Permanent Sovereignty over Natural Resources”, Nico J Schrijver, last update June 2008
United Nations General Assembly Resolution 1803, *Permanent Sovereignty over Natural Resources*, 14th December 1962, para 5

⁶⁵ United Nations General Assembly Resolution 1803, *Permanent Sovereignty over Natural Resources*, 14th December 1962, para 6

⁶⁶ United Nations General Assembly Resolution 1803, *Permanent Sovereignty over Natural Resources*, 14th December 1962, para 7

⁶⁷ United Nations General Assembly Resolution 1803, *Permanent Sovereignty over Natural Resources*, 14th December 1962, para 8

mentioned regulations would be particularly difficult to obtain, using consent as a criterion appears to be the most reliable means of assessment.

Following the 1972 Stockholm Declaration which many consider to be the foundation of modern international environmental law, the General Assembly encouraged the inclusion of more regulations on nature management and exploitation methods which are often used concomitantly with PSNR.⁶⁸ However, for the purpose of this paper and as environmental law related issues are beyond the scope of this study, the author will not focus on the potential violations of this area of law.

All throughout the above mentioned instruments, a particularly emphasis was placed on the crucial importance of the consent of the people in matters relating to the use and exploitation of natural resources which they have sovereignty. This remains until this day a key characteristic of this framework and a crucial factor in the present case.

iv. Legal Significance of the Permanent Sovereignty over Natural Resources:

As previously mentioned, PSNR emerged from the 1803 Resolution of the UN General Assembly. This particularity allowed for the principle to gain rapid acceptance on an international level. However, the non-binding character of the document as well as the fact the UN General Assembly Resolutions are not considered to be formal sources of international law⁶⁹ have raised questions regarding the PSNR principle.

“Regardless of the legal nature of the United Nations General Assembly Resolutions in general and of Resolution 1803 in particular, which is rather disputed in international law, the core elements of this concept have certainly emerged to something like a principle of international law. Like sole arbitrator Rene’ Jean Dupuy had declared in its judgement of Texaco Overseas Co. v. Government of the Libyan Arab Republic ‘the Natural Resources Declaration of 1962 had been adopted by a great many states, representing not only all geographical areas but also all economic systems and had thus expressed an opinio juris communis reflecting the state of customary international law in this field,

⁶⁸ Jane A. Hofbauer, *The Principle of Permanent Sovereignty over Natural Resources and its Modern Implications* (LL.M. Master Degree Thesis, Faculty of Law University of Iceland) 2011, p 2, https://skemman.is/bitstream/1946/4602/1/Jane_Hofbauer.pdf, last accessed 3rd of July 2017

⁶⁹ art 38(1) Statute of the International Court of Justice

*including the contentious issue of nationalisation of foreign property under international law.”*⁷⁰

Despite the ICJ's refusal to rule on the status of PSNR in the East Timor case due to its lack of jurisdiction, two of the opinions in the dissenting judgment expressed the belief that PSNR is to be considered as one of the essential principles of international law.⁷¹ In this context, it could be argued that the principle has over the years attained *erga omnes* character and that States have therefore all interests in seeing it respected. In the Armed Activities on the Territory of the Congo case, the ICJ for the first time recognised that PSNR has reached the status of customary international law.⁷² Some scholars have gone as far as arguing that PSNR nowadays qualifies as *jus cogens*.⁷³ Indeed “there is support for the view that the *jus cogens* status has been achieved in light of the fact that the principle of permanent sovereignty meets the test of being widely accepted and recognised by a very large majority of states.”⁷⁴ Other scholars on the other hand have been doubtful whether the integrality of the clauses that are commonly associated with PSNR have reached such status. Some have been more reserved, such as “Nico Schrijver, (who) contends that ‘one may conclude that some of its core elements such as that of the prohibition of appropriation carry this status’”⁷⁵ In conclusion, whether PSNR is to be regarded as *jus cogens* or not, it has been widely accepted that it qualifies as customary international.

v. Sovereignty in the case of Western Sahara:

In order to accurately apply the PSNR framework, it is indispensable to understand where sovereignty lies in the case of Western Sahara. Until this day, no agreement has been found amongst the international community nor the scholarly one with regards to this issue. Indeed, some scholars have argued that sovereignty still remains in the hand of the Spanish Kingdom as was the case for Portugal with East

⁷⁰ Stephan Hobe, *Evolution of the Principle on Permanent Sovereignty over Natural Resources* in *Permanent Sovereignty over Natural Resources* edited by Marc Bungenberg and Stephan Hobe (Springer International Publishing) p 10

⁷¹ Case Concerning East Timor (Portugal v. Australia), International Court of Justice (ICJ), 30 June 1995

⁷² Armed Activities on the Territory of the Congo [2005] ICJ Rep 168, 251–2 [244]

⁷³ Ricardo Pereira and Orla Gough, *Natural Resource Governance and the Right to Self-Determination of Indigenous Peoples under International Law* (Melbourne Journal of International Law Vol 14) p460

⁷⁴ Ricardo Pereira and Orla Gough, *Natural Resource Governance and the Right to Self-Determination of Indigenous Peoples under International Law* (Melbourne Journal of International Law Vol 14) p464

⁷⁵ Nico Schrijver, *Sovereignty over Natural Resources: Balancing Rights and Duties* (Cambridge University Press, 1997) p 221-222

Timor.⁷⁶ As a former colony, there is no denying that the Spain previously had sovereignty over the territory. However, the controversy revolves around the question of whether the addition of Western Sahara onto the United Nations' list of non-self governing territories displaced this sovereignty. The very purpose of the creation of this framework was to foster self determination in colonial territories. The end goal was therefore to displace sovereignty from the colonial power towards the colony itself. In the case of Western Sahara, this process was never fulfilled: Spain attempted to surrender its authority and transfer it to Morocco without granting the Saharawi people self determination as advocated for by the United Nations.⁷⁷ In this sense, some scholars have argued that until this day, Spain retains its sovereignty over the territory as the process was never completed. Another view is that by assigning the role of administering power to the Spanish Kingdom, the United Nations has effectively displaced the sovereignty onto the Saharawi people. The writer believes this theory to be much more compelling and will briefly argue the point as it is not the direct focus of the argument. Indeed the change in terminology from "sovereign power" to "administering power" implies that the State in question is in effective control of the territory and has a duty to administer it and is therefore by nature limiting. Indeed "to the extent that sovereignty implies the unfettered right to control or to dispose of the territory in question, the obligation in Article 73b, and the associated principle of self-determination, substantially limit the sovereignty of an Administering State."⁷⁸ To exemplify, the Spanish State would never be qualified as the administering power of the Spanish territory today: this would amount to reducing the power of the Spanish government who indeed has a duty to administer the territory but whose power are much broader. It appears to be unlikely for an administering power to retain its sovereignty over a territory when the restrictions put on that authority are taken into consideration. In that sense, through the doctrine of self determination, the displacement of sovereignty towards the indigenous population would be a sensible conclusion as the first step towards the fulfilment of this process.⁷⁹ This change appears to be consistent the evolution mentioned above⁸⁰ : the United Nations through

⁷⁶ International Criminal Court Case Concerning East Timor (Portugal v. Australia), Judgement of 20 June 1995

⁷⁷ cf I.1. Historical Background

⁷⁸ Max Planck, *Encyclopedia of Public International Law* (Oxford Public International Law), "Permanent Sovereignty over Natural Resources", Nico J Schrijver, last update June 2008

⁷⁹ Creation of States in International Law, p 615

⁸⁰ JWJOAEFOF

the establishment of the framework of non-self governing territories and its evolution in the 1970's encouraged a shift from the reliance on the good will of the coloniser, through the sacred trust put its hands, to the granting of indigenous peoples with rights of their own. Following this logic, the transfer of sovereignty from the Spain to the Saharawi people would be consistent with this ideology, allowing the latter to take its future in its own hands rather than being dependent on the Spanish will.

B. Western Sahara as an Occupied Territory:

i. The Legal Framework of the Law of the Law of Occupation:

Firstly, this section will provide a rapid overview of the sources of the law of occupation to better understand the underlying principles that underpin this area of law and following this appropriately apply them to the case of Western Sahara.

Two major legislative instruments govern the law of occupation: the Hague Convention IV and particularly article 42:

« A Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised. »⁸¹

and the Geneva Convention and particularly article 2 :

“In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them. The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.”⁸²

It has been made extensively clear that the Geneva Convention should not in any way be construed as replacing the The Hague Convention but rather supplementing it.⁸³ As

⁸¹ International Conferences, The Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, 18 th October 1907, article 42

⁸² International Committee of the Red Cross (ICRC), Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 12 August 1949
International Committee of the Red Cross (ICRC), Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977

⁸³ Max Planck, *Encyclopaedia of Public International Law* (Oxford Public International Law), “Geneva Convention I-IV”, Hans-Peter Gasser, last update December 2015

Morocco only has not ratified the The Hague Convention IV⁸⁴, the relevance of the Convention to this case will be demonstrated rather than assumed. According to the *Nicaragua case*, despite a state not being party to a specific treaty, it is still governed by customary law.⁸⁵ Therefore, if the provisions present in the The Hague Convention qualifies as customary rules by 1975, Morocco would be bound by said regulations regardless of whether it had ratified the Convention. Given the virtually universal acceptance of this treaty today, its applicability is seldom discussed. However, the author takes the stance that it is crucial to a solid establishment of the legal framework to demonstrate that Morocco is not only bound by the broader aspects of the definition of occupation as enshrined by the GCIV but also by the very foundation of the definition present in the The Hague Convention.

With regards to the same issue, the International Military Tribunal of Nuremberg in 1946 took the stance that: “the rules of land warfare expressed in the [Hague] Convention undoubtedly represented an advance over existing international law at the time of their adoption. But the convention expressly stated that it was an attempt ‘to revise the general laws and customs of war’, which it thus recognized to be then existing, but by 1939 these rules laid down in the Convention were recognized by all civilized nations, and were regarded as being declaratory of the laws and customs of war which are referred to in Article 6(b) of the Charter.”⁸⁶ Years later and with regards to the application of the Geneva Convention, the Eritrea-Ethiopia Claims Commission used the same rationale.⁸⁷ Applying the same reasoning to the case of Morocco, the events in question having occurred in 1975, or 68 years after the drafting of The Hague Convention and a majority of countries having ratified the Convention by then, it is reasonable to assume that the principles included in said Convention qualified as customary law at the time of the events. Thus, the legal test determining whether Morocco is indeed occupying Western Sahara will be based on the definition of both treaties. In this case, it appears to be clear and preemptory that Western Sahara is placed

⁸⁴ International Conferences, The Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, 18 th October 1907

⁸⁵ International Court of Justice, *Nicaragua v. United States of America, Case Concerning Military and Paramilitary Activities in and Against Nicaragua*, 27th June 1986, Aspect of Jurisdiction

⁸⁶ International Military Tribunal, *The Trial against Goering, et al.*, Judgment of 1 October 1946, International Military Tribunal in Nuremberg, *The Trial of the Major War Criminals*, (1947), Vol. 1, at 64–65

⁸⁷ Eritrea Ethiopia Claims Commission, *Partial Award / Prisoners of War / Ethiopia’s Claim 4*, The Federal Democratic Republic of Ethiopia and The State of Eritrea, 1st July 2003, para 30-32

under the actual and effective authority of Morocco; this has never been contested by either of the parties involved.

However other related issues remain, such as the exact legal framework under which the situation should be assessed. Under the law of occupation, two major frameworks arise: the one of pacific occupation and the one of belligerent occupation.⁸⁸ Historically, pacific occupation, which refers to the occupation of a territory with the agreement of the sovereign occupied State, has been distinguished from the same situation arising without said agreement.⁸⁹ Since the introduction of the Geneva Convention IV (GCIV), the framework of pacific occupation has been eclipsed and most cases would now fall under the framework of belligerent occupation due to the widening of the definition.⁹⁰ Indeed, this area of law evolved from assuming that consent was given by the occupied State unless the occupation was formally contested (whether in the form of military intervention or legal recourses), to the belief that silence or inaction could not be equated to consent. In the case of Western Sahara however, the events in question could still potentially qualify as pacific occupation as explicit consent was given through the agreement that was signed both by Spain and Morocco. Despite this Agreement being in violation of Spanish national law as well as international law as previously explained, the argument could be raised that the agreement required by pacific occupation does not refer to a treaty or any formal legal instrument but rather the to the consent of the state that could be granted informally or even orally. In that case and as mentioned previously, the fact that said consent, whether formal through the Madrid Accords or informal, was invalid should suffice. In those circumstances, the case of Western Sahara cannot in any way fall under the label of pacific occupation.

Thus, the present case would appear to falls within the framework of belligerent occupation despite the absence of formal declaration of war, which was an original requirement of this framework. As confirmed by GCIV article 2.2 however, “neither a

⁸⁸ Yutaka Arai-Takahashi, *The Law of Occupation: Continuity and Change of the International Humanitarian Law and its Interaction with International Human Rights Law*, Martinus Nijhoff Publishers, 2009, Chapter 1

⁸⁹ Max Planck, *Encyclopaedia of Public International Law*, Oxford Public International Law, “Geneva Convention I-IV”, Eyal Benvenisti, last update June 2009

⁹⁰ Max Planck, *Encyclopaedia of Public International Law*, Oxford Public International Law, “Geneva Convention I-IV”, Eyal Benvenisti, last update June 2009

formal declaration of war nor the recognition of a state of war by any party to the conflict—or by both—is required to make international humanitarian law applicable.”⁹¹

Despite the lack of consent of the legitimate authority not being an explicit requirement of the law of belligerent occupation, it has been widely accepted that the absence of consent is a central element to the establishment of the occupation.⁹² Conversely and without either being legally binding, the idea that the occupied state must somehow have been coerced, whether it is through the use of force or non-violent means, appears to permeate the literature for logical reasons.⁹³ Thus, in this context, consent and coercion stand in binary opposition rather than being presented as the two ends of a spectrum. Notwithstanding and as the situation in question illustrates, assuming those two concepts to be diametrically opposed to one another would be a mistake ; here no valid consent was given by the authority but the latter were not coerced either. In that sense, the occupation of Western Sahara could be qualified as a type of belligerent occupation *sui generis* in which those non-binding principles do not apply to the present case. In order to circumvent this issue, some have argued that Spain was been somehow coerced into signing the Madrid Agreement ; coercion, in this case in the form of threat or duress, is not argued to be the sole reason for the signing. The fact that coercion was still a factor in this decision is considered to be sufficient.⁹⁴ However, the author finds this theory not only unconvincing but also morally problematic. Considering the wave of decolonisation that arose at the time of the events, the UN resolution exhorting Spain to proceed to the decolonisation of the Spanish Sahara allowing for the right of the Saharawi people to self-determination to be fulfilled as well as the agreement for Spain to do so, it appears to be obvious that the territory would not remain under Spanish authority for much longer. Had Spain actually proceeded to celebrate a referendum, the outcome of which would have undoubtedly resulted in the independence of the territory, not only would have Spain had to leave the Spanish Sahara without any compensation, the administering power would have had to invest considerable funds into this procedure. In this context, the writer takes the stance that the Madrid

⁹¹ Max Planck, *Encyclopaedia of Public International Law*, Oxford Public International Law, “International Humanitarian Law”, Eyal Benvenisti, last update June 2009

⁹² Ben Saul, *The Status of Western Sahara as Occupied Territory under International Humanitarian Law and the Exploitation of Natural Resources* (Global Change, Peace and Security) 2015, 308

⁹³ Ben Saul, *The Status of Western Sahara as Occupied Territory under International Humanitarian Law and the Exploitation of Natural Resources* (Global Change, Peace and Security) 2015, 308

⁹⁴ Ben Saul, *The Status of Western Sahara as Occupied Territory under International Humanitarian Law and the Exploitation of Natural Resources* (Global Change, Peace and Security) 2015, 309

Agreement was seen by Spain as an opportunity rather than having being coerced into the signing. Thanks to said Agreement, Spain not only maintained favourable economic and diplomatic relations with Rabat but was also allowed to retain **35%** of shares of the Bou Craa phosphate mines as well as guaranteed fishing rights on the Saharawi coast.⁹⁵ Taking into account these important compensations, the undeniably significant advantages provided by the deal appear to make it extremely unlikely for coercion to have been required in order for Spain to give its consent. The fact that Spain never claimed to have been coerced or has never taken any legal steps against Morocco in the matter tends to confirm that theory. Furthermore, and as mentioned previously, as coercion is not a necessary requirement of the law of belligerent occupation, the above reasoning appears to be unnecessary. More problematically, this rationale would put Spain in the place of the victim being coerced in surrendering the territory it was administering ; in addition to being inaccurate, it would be morally dubious to qualify the coloniser who until this day refuses to take its responsibility in this situation as the victim when it is effectively the accomplice of the Moroccan occupying force and has done so by breaking its own as well as international laws.

In conclusion and as the fundamental requirements of the framework of belligerent occupation are present according to the The Hague Convention and the GCIV, the situation will be analysed under said framework with Morocco being the occupying power and Spain having retained its administering duties.

ii. Belligerent Occupation and Natural Resources:

According to article 43 of The Hague Regulations, “The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.”⁹⁶ This should not be misconstrued as a transfer in sovereignty; on the contrary, this article subtly implies that the rights and responsibility vested in the occupying power are not to be equated to the ones associated with the ones conferred to

⁹⁵ Raphael Fisera, *A People vs Corporations ? Self-Determination, Natural Resources and Transnational Corporations in Western Sahara* (Master’s Thesis University of Bilbao) 2003, p 39

⁹⁶ International Conferences, The Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, 18th October 1907, article 43

the sovereign. Indeed, the limited authority that is transferred is aimed at catering for the *de facto* and temporary situation in which the legitimate sovereign is incapable of exercising its power. In this context, “if as a result of war action, a belligerent occupies territory of the adversary, he does not, thereby, acquire the right to dispose of property in that territory, except according to the strict rules laid down in the Hague Regulations. The economy of the belligerently occupied territory is to be kept intact, except for the carefully defined permissions given to the occupying territory.”⁹⁷ The Hague Regulations establish different frameworks applicable respectively to private and public properties, despite not defining the terms as such.⁹⁸ For the purpose of this piece, the writer will assume that the land in question qualifies as a public property and will therefore not explore the framework related to private property.

For the sake of concision and as it is not the direct focus of this piece, the legal framework regarding the exploitation of movable public properties under belligerent occupation will not be analysed. With regards to immovable properties, article 55 states that “the occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.”⁹⁹ It is widely agreed upon that the list of property types that is enumerated in article 55 is not to be considered as exhaustive but rather as a guideline.¹⁰⁰ The doctrine of usufruct stems from Roman Law and is defined by Justinian’s Institutes as “usus fructus est ius rebus utendi fruendi salva rerum substantia.” or “usufruct is the right to the use and fruits of another person’s property, with the duty to preserve its substance”.¹⁰¹ In the El Nazer case, Justice Shamgar defined more precisely the scope of the doctrine by attributing three key elements to it.¹⁰² Firstly, he emphasised the fact that the ownership of the property does not in any way pass onto the occupier under the law of usufruct.

⁹⁷In re Krupp (1948) 15 Ann. Dig. 620 at pp 622-623

⁹⁸International Conferences, The Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, 18th October 1907

⁹⁹ International Conferences, The Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, 18th October 1907, article 55

¹⁰⁰ Yoram Dinstein, *The International Law of Belligerent Occupation* (Cambridge University Press, 2009) p 214

¹⁰¹ International Committee of the Red Cross, *How does Law Protect in War, Usufructuary*, <https://casebook.icrc.org/glossary/usufructuary>, last accessed 5th July 2017

¹⁰² El Nazer et al. v. Commander of Judea and Samaria Region et al. (HC 285/81) 13 Israel Y. B. Rts. 368 (1983)

Secondly, the right of the occupier to “reap the fruits” of this property and administer it was reiterated. And finally, the duty of the occupier to preserve the property and ensure its continued existence was also discussed.¹⁰³ In other words, “the occupying power must keep the capital of immovable State property unharmed (subject to ordinary wear and tear, depending on the type of property), and, as is common in a usufruct, entitlements are limited to the rights of use (*jus utiendi*) and consumption of the fruits (*jus fruendi*). The expressions “administration” and “usufruct” -appearing in Regulation 55- are intended to exclude sale of the property by the Occupying Power (in the absence of ownership), while lease, utilisation or cultivation of land is permitted.”¹⁰⁴ Some scholars have been debating whether the profit arising out of the capital of the immovable property should necessarily be used for the profit of the people in the occupied territories.¹⁰⁵ As it appears to be impossible to track down the capital the Moroccan Kingdom benefits from as a result of activities in the occupied territories and where said capital is reinvested, this paper will not explore this aspect and will rely on other arguments instead to build its case. However, it is worth mentioning that Morocco does not recognise Western Sahara’s independence nor autonomy in any way, it is unlikely for the Kingdom to redistribute profits in such manner.

As the literature regarding the exploitation of renewable natural resources under belligerent occupation is limited, this paper will extrapolate the principles applied to non-renewable resources and attempt to draw conclusions based on those. The core of the debate regarding the limits of the exploitation of resources under belligerent occupation lies in the interpretation of the duty to protect which is assigned to the occupying power. A very limited number of scholars consider this duty as absolute and to apply to the resource only. Therefore and following this line of reasoning, this school of thought strongly condemn any sort of extraction of non-renewable (most cases involve minning and quarring).¹⁰⁶ A great majority of scholars on the other hand and in accordance with the 2004 UK Manual¹⁰⁷, consider that the duty to protect is to be applied to the territory as a whole and include the infrastructures located in the territory.

¹⁰³ El Nazer et al. v. Commander of Judea and Samaria Region et al. (HC 285/81) 13 Israel Y. B. Rts. 368 (1983)

¹⁰⁴ Yoram Dinstein, *The International Law of Belligerent Occupation* (Cambridge University Press, 2009) p 214

¹⁰⁵ Yoram Dinstein, *The International Law of Belligerent Occupation* (Cambridge University Press, 2009) p 214

¹⁰⁶ Yoram Dinstein, *The International Law of Belligerent Occupation* (Cambridge University Press, 2009) p 214

¹⁰⁷ United Kingdom Ministry of Defence, *Manual of the Law of Armed Conflicts*, 2004

In order to render such provision viable, the exploitation of non-renewable natural resources is to be allowed as long as it does not exceed the yielding pre-occupation.¹⁰⁸ Through this measure, the maintaining of the infrastructures present at the time of the invasion would be maintained and updated for the benefit of the local population after the end of the occupation. If their use was to be prohibited, it would be extremely unlikely for an occupying power to maintain these infrastructures for lack of concern as well as cost.

However, in the case of the wind farms which this study will focus on, the relevant structures were built after the invasion and the exploitation would therefore not be associated with the maintenance of an already existing infrastructure. Some scholars such as Dinstein and Glahn¹⁰⁹ as well as the Israeli Supreme Court take the stance that, especially in cases of prolonged occupation, the building of new infrastructures designed to exploit natural resources that had until then been untouched is not inconsistent with Regulation 55: “one cannot ignore the burgeoning needs of the local inhabitants. Thus the Supreme Court of Israel decided that opening a new quarry in the West Bank was consistent with Regulation 55 since its product would be used for local works in the territory.”¹¹⁰ Therefore, it appears to be clear that the derogation advocated by the Court and some scholars is a response to the needs of the local population. In the case of Western Sahara however, no evidence has been produced regarding the direct benefit enjoyed by Saharawis in terms of investments in the region. Historically, the fact that Morocco has consistently advocated for the hiring of Moroccan settlers over Saharawi ones tend to render that claim even more doubtful. In that sense and if the benefits of the exploitation of natural resources in the occupied territories does not benefit the Saharawi people, such practices would be in violation of humanitarian law.

C. PSNR and the Law Regarding the Exploitation of Natural Resources under Belligerent Occupation: can both coexist or does one replace the other?

As previously demonstrated, both the framework of PSNR and the one of belligerent occupation apply in the case of Western Sahara. However, common agreement

¹⁰⁸ Yoram Dinstein, *The International Law of Belligerent Occupation* (Cambridge University Press, 2009) p 216

¹⁰⁹ G. Von Glahn, *The Occupation of the Enemy Territory: A Commentary on the Law and Practice of Belligerent Occupation*, 1957, p 687 - 688

¹¹⁰ High Court of Justice 9717/03, “Na’ale - Association for Settlement in Samaria of Employees of the Israel Aircraft Industry v. Higher Planning Council in Judea and Samaria, 58 (6) PD), para 102-103

regarding whether or not both systems can indeed coexist is nowhere to be found in the literature. The UN General Assembly in a number of resolutions has asserted that this could be the case. In the case of Palestine for instance, it has been stated that

*“concerning permanent sovereignty over national resources in the occupied Arab territories, (...) the principle of the permanent sovereignty of peoples over their natural resources is applicable in the situation of foreign occupation. In this respect, the UNGA reaffirmed the right of peoples under occupation to restitution of and full compensation for the exploitation, loss, and depletion of, and damages to, the natural resources to territories under occupation. Although adopted in the roaring days of the New International World Order debate, the resolution has received follow-up in contemporary resolutions concerning the Israeli occupation of the Palestinian territory and the Syrian Golan. In UNGA Resolution 62/181 of 19 December 2007, the UNGA reaffirmed ‘the principle of the permanent sovereignty of peoples under foreign occupation over their natural resources’ (at para. 3 Preamble) and extended the right of restitution to the situation of endangerment of natural resources by the occupant.”*¹¹¹

In addition, a number of Security Council Resolutions urged Uganda to refrain from exploiting the Democratic Republic of Congo’s (DRC) natural resources by reaffirming DRC’s sovereignty over said resources.¹¹² The binding character of Security Council Resolution (unlike General Assembly ones) should be taken into consideration in this context. However, in the case of *Armed Activities*, the court came to the decision that PSNR did not apply under this case of belligerent occupation.¹¹³ Despite not providing the ratio that led to this decision, the Court decided that the *jus in bello* or humanitarian law was to be applied in that case exclusively. For the sake of concision, this piece will not focus on assessing whether the ICJ’s decision in the *Armed Conflict* case contradicts the other instruments and cases previously mentioned but rather take it as face value and demonstrate that it does not apply to the present case and that therefore the other instruments should prevail in this instance. In fact, the Court in this case made

¹¹¹ United Nations General Assembly Resolution 3336, “Permanent Sovereignty over National Resources in the Occupied Arab Territories” para 3

¹¹² United Nations Security Council ‘on the Situation concerning the Democratic Republic of the Congo’ (22 February 2001) UN Doc S/RES/1341; UNSC Res 1355 (15 June 2001) UN Doc S/RES/1355; UNSC Res 1457 (24 January 2003) UN Doc S/RES/1457; UNSC Res 1493 (28 July 2003) UN Doc A/RES/1493; UNSC Res 1533 (12 March 2004) UN Doc A/RES/1533.

¹¹³ *Armed Activities on the Territory of the Congo* [2005] ICJ Rep 168, 251–2 [244]

the decision not to extend the scope of PSNR to non colonial related issues. However in the case of Western Sahara, applying both frameworks would not amount to the same reasoning; indeed, Spain is (as demonstrated above) still the administering power of Western Sahara which remains until today a non-self governing territory. The situation in this region is therefore not comparable to the one in DRC, where Uganda as a non-colonial occupying power exploited natural resources. In this context and without any contradicting elements, it appears that both *jus in bello* and PSNR should be applied to the case of Western Sahara.

III. Case Studies:

A. Morocco and its environmental policies:

Since 1992 and the Summit of Rio, the protection of the environment and global warming have become of interest to the Moroccan Kingdom.¹¹⁴ Since then, a new Constitution including multiple mentions of rights relating to the environment as well as a whole section regulating and setting the agenda of the “Environmental Council” has been adopted. This new Constitution ratified in 2011 emphasises the importance of sustainable development through the careful use and the protection of natural resources.¹¹⁵ In order to better understand the relevance of environmental policies within a broader context, it is important to take into account the fact that around 91% of the energy consumed in Morocco is imported.¹¹⁶ The Kingdom is therefore extremely energetically dependent on foreign providers. In order to tackle this issue in a sustainable manner, it has benefited from important donations from a number of international organisations as the table below exemplifies.

Fund	Projects	Value	Notes
GEF	22 projects have been undertaken including climate change strategy and energy efficiency (not all climate change related)	Annual budget of \$4.5 million	GEF agencies include AfDB, a range of UN organisations and World Bank.
Clean Technology Fund	National Programme focussed on wind power	\$150m	Co-managed by World Bank and AfDB
Clean Technology Fund	Regional Programme focussed on solar power	\$197m out of regional total of \$750 million	Co-managed by World Bank and AfDB
International Climate Initiative	Promoting Wind Energy and Other Renewables in Morocco	\$1.99	Under the Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety (BMUB)

¹¹⁴ Ellinor Zeino-Mahmalat and Abdelhadi Bennis, *Environment and Climate Change in Morocco - Diagnostic and Perspective* (Konrad Adenauer Stiftung), p 7

¹¹⁵ Constitution of Morocco, 2011, art 35

¹¹⁶ World Bank, data from 2014, <http://data.worldbank.org/indicator/EG.IMP.CON.S.ZS?locations=MA>

GEF Trust Fund (GEF 4)	Energy Efficiency in the Industrial Sector	\$2.73	
Special Climate Change Fund	Integrating Climate Change to Increase Resilience of Agricultural and Water Sectors	\$4.35	Created under the auspices of the United Nations and by the Global Environment Facility

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In this context, it is particularly important to understand the way in which said funding has been allocated and to which specific project they contribute as their location is key in determining their legality. In order to understand Morocco's environmental policy accurately, this paper will provide a historical outline of its evolution.

Despite the fact that a small number of policies relating to environmental issues had been implemented by Morocco before the Rio Summit of 1992, the absence of a clear and global vision on the issue is undeniable. This is exemplified amongst other things by the absence of a ministry related position dedicated to environmental issues until 1992. Following the Summit, six instruments were created in order to shape the environmental policies in a holistic manner : the National Strategy for the Protection of the Environments and Sustainable Development¹¹⁸, the National Action Plan for the Environment¹¹⁹, the National Plan against Climate Change¹²⁰, the Charter for the Planning of the Territory¹²¹, the National Plan for dealing with Domestic Wastes ¹²² and the National Plan regarding the Sanatization of Water Sources¹²³. Those were reinforced by the adoption of a National Charter of the Environment and Sustainable Development in 2009.¹²⁴ In addition in 2015, Marrakech was selected under the United Nations Framework Convention on Climate Change to host the 22nd Conference of the Parties, or COP22.

Rabat's laudable interest in environmental protection is therefore directly reflected by the increasing significance of the development of environmental policies. Nonetheless,

¹¹⁷ Peter Grant *Climate Change Financing and Aid Effectiveness, Morocco Case Study, Final Report* (Organisation of Economic Co-Operation and Development (OECD))13 July 2011 <http://www.oecd.org/dac/environment-development/48458464.pdf> last accessed 15.07.17

¹¹⁸ La Stratégie nationale pour la Protection de l'Environnement et le Développement Durable (SnPEDD))

¹¹⁹ Le Plan d'Action national pour l'Environnement (PAnE) 1993

¹²⁰ Le Plan national de lutte contre le Changement Climatique (PnCC) 1993

¹²¹ La Charte de l'Aménagement du Territoire (CnAT) 1993

¹²² Le Plan national de gestion des Déchets Ménagers (PnDM) 1993

¹²³ Le Plan national d'Assainissement liquide (PnAl) et d'épuration des eaux usées, 1993

¹²⁴ Charte National de l'Environnement et du Développement Durable) 2009

whether this evolution was triggered by genuinely ethical motives rather than economic interest remains doubtful. This point will be further illustrated by focusing on the Moroccan greenwashing practices.

B. Greenwashing, a questionable marketing strategy:

“Greenwashing is the act of misleading consumers regarding the environmental practices of a company (firm-level greenwashing) or the environmental benefits of a product or service (product-level greenwashing)”. The term is derived from whitewashing which refers to the “hiding the unpleasant facts or truth about it in order to make it acceptable compound with green, symbolising the environmental focus of the process.”¹²⁵

The term was coined in the 1980’s by New York environmental activist Jay Westerveld with regards to the hospitality sector. As he later reported in his book, he found in the bathroom a card stating: “Save Our Planet: Every day, millions of gallons of water are used to wash towels that have only been used once. You make the choice: A towel on the rack means, 'I will use again.' A towel on the floor means, 'Please replace.' Thank your for helping us conserve the Earth's vital resources.”¹²⁶

Following this experience, Westerveld challenged himself to shed light onto the growing promotion of so called green policies used in diverse sectors of the economy which true purpose lies in the increase of the profit margins of companies. In this specific case, he did so by publishing articles highlighting the wasting and overuse of other resources such as water on a consistent basis. In this context, the environmentally friendly rhetoric used with regards to the washing of towels was inconsistent with the other policies carried out by the hotel and was therefore evidently used as a means to cut cost. Over time, scholars and activists have established informal frameworks such as Gillespie’s “10 signs of Greenwashing” and TerraChoice’s “Seven Sins” list in order to harmonise the notion and facilitate the spotting of such practices.¹²⁷

¹²⁵ Jim Motavalli *A History of Greenwashing: How Dirty Towels Impacted the Green Movement* <https://www.aol.com/article/2011/02/12/the-history-of-greenwashing-how-dirty-towels-impacted-the-green/19628686/>, last accessed 15.07.17

¹²⁶ Jim Motavalli *A History of Greenwashing: How Dirty Towels Impacted the Green Movement* <https://www.aol.com/article/2011/02/12/the-history-of-greenwashing-how-dirty-towels-impacted-the-green/19628686/>, last accessed 15.07.17

¹²⁷ Jim Motavalli *A History of Greenwashing: How Dirty Towels Impacted the Green Movement* <https://www.aol.com/article/2011/02/12/the-history-of-greenwashing-how-dirty-towels-impacted-the-green/19628686/>, last accessed 15.07.17

The main driver of greenwashing is undeniably market based. Indeed, consumers' and investors' demand in addition to competitive pressure have been a significant incentive driving the greenwashing trend. This can lead companies to communicate inappropriately, whether it is with regards to the level of emphasis or simply the content of the advertisement, regarding their supposedly environmentally friendly practices. In fact, research has shown that "all else being equal, the greater the perceived consumer and investor pressure for environmentally friendly firms, the more likely a firm is to greenwash."¹²⁸

In addition to investor and consumers demand, the extremely competitive aspect of today's market should not be overlooked when assessing the drivers of greenwashing. Indeed, "organisations tend to model themselves after similar organisations in their industry that they perceive to be more legitimate or successful, and research has shown that this applies to the adoption of green practices."¹²⁹ This does not however mean that companies will automatically try to develop green practices but rather that most will focus on mimicking the communication of other firms with regards to their green practices. In other words, advertisement rarely reflects actions on the ground. In 2009, Mark Spaulding carried out a study which result revealed that 98% of products benefited from greenwashing.¹³⁰ This appallingly high figure illustrates the significance of the two factors previously mentioned. In addition, the extremely loose regulatory framework in place in most countries as well as on an European level with regards to the use of environment related terminology (terms such as "eco-friendly" or "natural" which do not have a legal definition) has contributed to the abusive use of this rhetoric for public relations and advertising purposes.

As has been demonstrated above, environmental claims and their exaggerations have significantly been motivated by demand and competition. Over the past few years and as a clear mainstreaming of the process has been witnessed, some organisations have decided to broaden the scope of the term to include non environmental issues.¹³¹

¹²⁸ Magali A. Delmas and Vanessa Cuerel Burbano *The Drivers of Greenwashing* (University of California, Los Angeles) 2011, p72

¹²⁹ Magali A. Delmas and Vanessa Cuerel Burbano *The Drivers of Greenwashing* (University of California, Los Angeles) 2011, p72

¹³⁰ Mark Spaulding *The Seven Deadly Sins of Greenwashing*, 2008, <http://sinsofgreenwashing.com/index94e4.pdf>, last accessed 17.07.17

¹³¹ Amongst others, the association Who Profits.

The Greenwashing of the Occupation, *The Solar Energy Industry and the Israeli Occupation* (Who Profits) January 2017, https://whoprofits.org/sites/default/files/greenwashing_the_occupation_web.pdf, last accessed 17.07.17

Greenwashing originally dealt with an ethical issue: companies claiming to foster sustainability to increase their profits. In this light, the term has been recently “to describe the way in which Israel tries to cultivate an image of being environmentally responsible in order to deflect attention from the daily realities of discrimination and restricted freedoms among Palestinians, including the degradation of natural resources that by legally belong to them.”¹³² In the sense, companies are effectively attempting to wash or conceal the occupation and its dire consequences by focusing shedding light onto their environmental policies, or green. This has been done extensively through advertisement targeted at consumers but also reports and legal arguments aimed at convincing investors (whether private or States) to invest in certain companies. A number of reports relating to this issue have been carried out especially with regards to the growing solar industry in the region. A textbook example of this kind of practices would be the 133 000 sq meters Kalia Solar Field built and Coal Sun operated solar farm located in a part of Palestinian land and currently used to the sole profit of of Israeli settlers. In spite of its location, Palestinians have neither been consulted nor allowed to collaborate on the Field. In addition, none of the profit made by this company in this specific location is redirected to the indigenous population in the region.¹³³ The environmental advantages of this electricity production system is mentioned at length on the company’s website priding themselves of upstanding members of the sustainability concious business family. No mention is made of the political situation on the ground nor of the legal issues this exploitation of resources involves. Internationally, the company gains the advantage of being seen as respectable and environmentally friendly while covering up the legal, social and ethical issues relating to this exploitation.

Similarly in the case of Western Sahara, Morocco has benefited from a positive coverage from the media on an international scale, being portrayed as a model with regards to its envionmental policies and sustainability focused development.¹³⁴

¹³² Israeli Laundry.org, *Greenwashing Introduction*, 23rd November 2011, <http://www.israelilaundry.org/2011/11/23/greenwashing-introduction/> last accessed 17.07.17

¹³³ The Greenwashing of the Occupation, *The Solar Energy Industry and the Israeli Occupation* (Who Profits) January 2017, p21 [https://whoprofits.org/sites/default/files/greenwashing the occupation web.pdf](https://whoprofits.org/sites/default/files/greenwashing%20the%20occupation%20web.pdf), last accessed 17.07.17

¹³⁴ Jacopo Prisco *Why Morocco is leading the charge against climate change* (CNN) December 2016, <http://edition.cnn.com/2016/11/17/africa/morocco-green-energy/index.html> last accessed 15.07.17
Celest Hicks *Morocco Lights the way for Africa on Renewable Energies*, (The Guardian) November 2016, <https://www.theguardian.com/global-development/2016/nov/17/cop22-host-morocco-lights-way-africa-renewable-energy-2020> last accessed 15.07.17

Meanwhile, very little light has been shed on the issues associated to this trend, including the Saharawi conflict.

C. The Case of Wind-Farming:

i. i. Morocco and Renewable Energies:

As previously mentioned, due to the absence of fossil energies in Morocco, the Kingdom has been obliged to import the quasi-totality its energy, primarily from Spain. In 2015, Morocco produced 8 154MW of electricity, 31% of which from coal, 10% from oil, 22% through hydroelectricity and only 9,4% through wind-farming.¹³⁵ By 2020, these figures are predicted to reach 14 500MW, 2000 MW of which from solar and wind sources. In 2014, 32% of the energy produced in Morocco came from renewable sources. This number is expected to rise to 42% by 2020 and 52% by 2030.¹³⁶ Thus, Morocco has managed to portray itself as a sustainability champion and an African leader with regards to green energies as the holding of the COP22 in Marrakech exemplifies. Abdelkader Amara, the Minister of Energy announced during a meeting at the International Energy Agency in November 2015 in Paris that Morocco would invest a total of 37 billion dollars by 2025 in energy sector nationwide. Following the general trend in energy policies, a majority of this investment is expected to be directed at the renewable energy sector specifically. The legal framework has also been adapted to future investments in sector.¹³⁷

ii. Policies Regarding Wind Farming in Morocco:

¹³⁵ Ministère Fédéral de l'Economie et de l'Energie Allemand et Ministère de l'Energie, des Mines, de l'Eau et de l'Environnement, Département de l'Energie et des Mines, Royaume du Maroc, *Partenariat Energétique Maroc-Allemagne PAREMA*
http://dkti-maroc.org/wp-content/uploads/sites/61/2017/04/170320_CP-PAREMA-BETD.pdf, last accessed 15.07.17

¹³⁶ Ministère Fédéral de l'Economie et de l'Energie Allemand et Ministère de l'Energie, des Mines, de l'Eau et de l'Environnement, Département de l'Energie et des Mines, Royaume du Maroc, *Partenariat Energétique Maroc-Allemagne PAREMA*
http://dkti-maroc.org/wp-content/uploads/sites/61/2017/04/170320_CP-PAREMA-BETD.pdf, last accessed 15.07.17

¹³⁷ Law 16-08 regarding self-production, Law 1309 authorising any person to produce energy from renewable sources, Law 47-09 regarding energy efficiency in the construction field

With a 3500 km coast line, Morocco possesses a tremendous potential with regards to wind energy. It has been estimated that the country could produce, solely through that medium of exploitation, over 5000 TWh/year. By the end of 2015, the infrastructure in place resulted in the production of around 1 160 MC.¹³⁸

As part of its wider environmental policy framework, Morocco has developed a broad wind program to promote energy efficiency. The country's Integrated Project of Wind Energy ambitions to gather an estimated total of 31.5 billion dirhams over the course of the next 10 years. These investments would allow the increase the amount of energy power produced by windmills from 820 MW in 2010 to 2,000 MW for 2020.

“The development of 1,720 MW of new wind farms for 2020 is provided in the context of the wind project: 720 MW under development in Tarfaya (300 MW), Akhfenir (200 MW), Bab El Oued (50 MW), Haouma (50 MW) and JbelKhalladi (120 MW). 1,000 MW are planned on five new sites chosen for their big potential: Tanger 2 (150 MW), El Baida Koudia Tetouan (300 MW), Taza (150 MW), Tiskrad at Laayoune (300 MW) and Boujdour (100 MW).”

This development would amount to a significant increase in the share of wind energy within the total electrical capacity, reaching 14% by 2020 (which amounts to 26% of the current energy production nationwide). Simultaneously, the program will result in the saving of 1.5 million tonnes of fuel annually and prevent the emission of 5.6 million of tonnes of CO₂ per year by switching to a renewable source of energy.¹³⁹ The commendable establishment of environmentally friendly policies should however not be isolated from the Saharawi conflict.

iii. Fom El Oued, Wind Farming in the Occupied Territories:

Indeed, the Kingdom has extensive plans with regards to the building of windmills within Saharawi territory. As much as 40% of added capacities on a national level are

¹³⁸ Ministère Fédéral de l'Economie et de l'Energie Allemand et Ministère de l'Energie, des Mines, de l'Eau et de l'Environnement, Département de l'Energie et des Mines, Royaume du Maroc, *Partenariat Energétique Maroc-Allemagne PAREMA*
http://dkti-maroc.org/wp-content/uploads/sites/61/2017/04/170320_CP-PAREMA-BETD.pdf, last accessed 15.07.17

¹³⁹ A. Ghezloun, A. Saidane, N. Oucher Energy Policy in the Context of Sustainable Development: Case of Morocco and Algeria (Energy Procedia, vol 50) 2014, p 538
http://ac.els-cdn.com/S1876610214008017/1-s2.0-S1876610214008017-main.pdf?_tid=9b1dc12e-5c12-11e7-9398-00000aabb0f01&acdnat=1498662244_90bb610e4337bd8529b6119668c46b80, last accessed 15.07.17

expected to be established in Western Sahara. According to Western Sahara Resources Watch, “the share of the Moroccan production of green energy in Western Sahara is today around 55 MW out of 787 MW, corresponding to a total of 7 percent.”

Siemens is one of the company that has most significantly contributed to this situation. Indeed, the German firm was in charge of the construction of the Fom el Oued wind park in the occupied territories in 2013. This project was carried out in collaboration with NAREVA, an energy company owns by the King of Morocco. Despite the limited information available with regards to the details of the operation (or whether Saharawis are employed on site), one thing remains clear: Siemens, with the collaboration of the Moroccan government has built and is currently operating the wind farm without the consent of the Saharawi people. In accordance with the legal reasoning presented in the first chapter, under the doctrine of permanent sovereignty over natural resources, said consent is absolutely vital to the legality of a project of the sort. Siemens is therefore breaching of international law by carrying out such exploitation.

In addition to the ones already in place, a farm with a 100MW capacity will soon be built in Boujdour and 300 MW one in Tiskrad, which are both located within the occupied territories. Thus, almost half of the increase fostered by the Integrated Project of Wind Energy will occur at the expense of the exploitation of Saharawi resources.¹⁴⁰

“In early 2012, the Moroccan agency for electricity, ONEE, launched an international tender, inviting companies to express their interest in a bid to construct the five wind farms under the second phase. In March 2016, ONEE officially announced that out of the six competing consortia, Siemens Wind Power, in grouping with Enel Green Power and Nareva, had been awarded the \$1.2 billion contract.”¹⁴¹

In addition to the unlawfulness of such project, Siemens has consistently referred to their enterprise as being located in Morocco, thereby blatantly mislabelling the production area and misleading their clients as to the real situation.

“ The entire project will be structured under a ‘Build Own Operate Transfer’ scheme (BOOT) and will be carried out under a public private partnership with ONEE, the Energy Investments Company (SIE) and the King Hassan II Fund, which

¹⁴⁰ cf ANNEX 1

¹⁴¹ Western Sahara Resources Watch *Report: Moroccan green energy used for plunder*, 2016 <http://www.wsrw.org/a243x3614> last accessed 15.07.17

are all state-owned. ONEE will buy all the generated electricity through a 20-year contract.”

By 2020, almost a quarter of the target capacity nationwide will originate from the occupied territories and this number will have nearly doubled since 2010. In this context, the central role played by Western Sahara against its will in the Moroccan wind energy plan is undeniable.

D. Green-tourism and the Dakhla Bay:

i. The significance of tourism in Morocco:

The development of infrastructures used for the exploitation of green energies within the occupied territories only constitutes one aspect of a much broader trend. Indeed, as the Kingdom of Morocco's greenwashing has been extremely successful on the international scale, a number of other sectors see themselves included in this new marketing strategy. For the sake of concision, this piece will only touch upon the development of eco-tourism in Western Sahara despite being conscience that other sectors of activity are seeing similar changes.

With the ambition of gaining importance on the international scene, the Kingdom of Morocco has made a concerted effort aimed at developing its tourism industry. Through the project “Vision 2010”, the Kingdom has set clear goals with regards to the implementation of a new tourism policy on a national scale.¹⁴² Indeed, despite a number of hindrances, whether to do with international affairs (such as the Arab Spring) or economic ones (such as the global economic crisis), tourism has remained over the past few decades one of the most dynamic economic sector in the country. The number of tourists visiting Morocco evolved from 4.4 millions in 2000 to 9.3 million in 2010 which amounts to an 8.7% increase, greatly exceeding the international average for the same period.¹⁴³ Morocco has almost completely met the target set by the “Vision 2010” Plan enacted in 2001.¹⁴⁴ By the end of 2010, Morocco has reached the 25th place in the world ranking of most visited countries, thereby picking up 12 spots over a decade

¹⁴² Vision 2010

¹⁴³ Royaume du Maroc, Ministère du Tourisme et de l'Artisanat, Département du Tourisme *Vision 2020, Strategie du Developpement Touristique* 2007, p 20, <http://www.orientalinvest.ma/telechargementfichiers/tourisme/Plaquette-2020-FR-bat.pdf>, last accessed 15.07.17

¹⁴⁴ The country has met 93% of its objectives according to the Ministry of Tourism.

counting as the 8th most significant increase on the international scale. In addition, Morocco has been the country seeing the biggest increase of tourist coming from Western Europe to a Mediterranean country over the last decade.¹⁴⁵

Gross domestic product from tourism has also increased from 31 billion to 60 billion dirhams between 2001 and 2010, which amounts to a 7.6% growth rate per year (much higher than the national average).¹⁴⁶ This dynamic has had a major socio-economic impact as the tourist sector in 2007 employed 450 000 people, increasing by 40% in a decade.

In order to cater for such drastic increases, the budget of the Moroccan Tourist Information Office¹⁴⁷ has increased to reach 550 million dirhams in 2010.¹⁴⁸ It is important to highlight that one of the major roles of such institution is to promote tourism in Morocco through marketing campaigns, many of which have focused on the ecological improvements the country has put in place. Targeted studies have in fact been carried out by the Tourist Information Office in order to better understand and respond to the expectations of European tourists which have consistently emphasised the appeal of green tourism.¹⁴⁹

Finally, the hosting capacities have seen a dramatic increase as well with hotels' hosting capacity increasing from 97 000 guests to 178 000 nationwide. In this context, it appears to be undeniable that tourism is today one of the most important economic sectors of the Moroccan Kingdom.

ii. Eco-tourism in Morocco, a growing sector:

¹⁴⁵ Kingdom of Morocco, Minister of Tourism and Handcrafts, Department of Tourism, "Vision 2020, Royaume du Maroc, Ministère du Tourisme et de l'Artisanat, Département du Tourisme *Vision 2020, Stratégie du Développement Touristique* 2007, p 24, <http://www.orientalinvest.ma/telechargementfichiers/tourisme/Plaque-2020-FR-bat.pdf>, last accessed 15.07.17

¹⁴⁶ Royaume du Maroc, Ministère du Tourisme et de l'Artisanat, Département du Tourisme *Vision 2020, Stratégie du Développement Touristique* 2007, p 25, <http://www.orientalinvest.ma/telechargementfichiers/tourisme/Plaque-2020-FR-bat.pdf>, last accessed 15.07.17

¹⁴⁷ Office National du Tourisme Marocain, ONTM

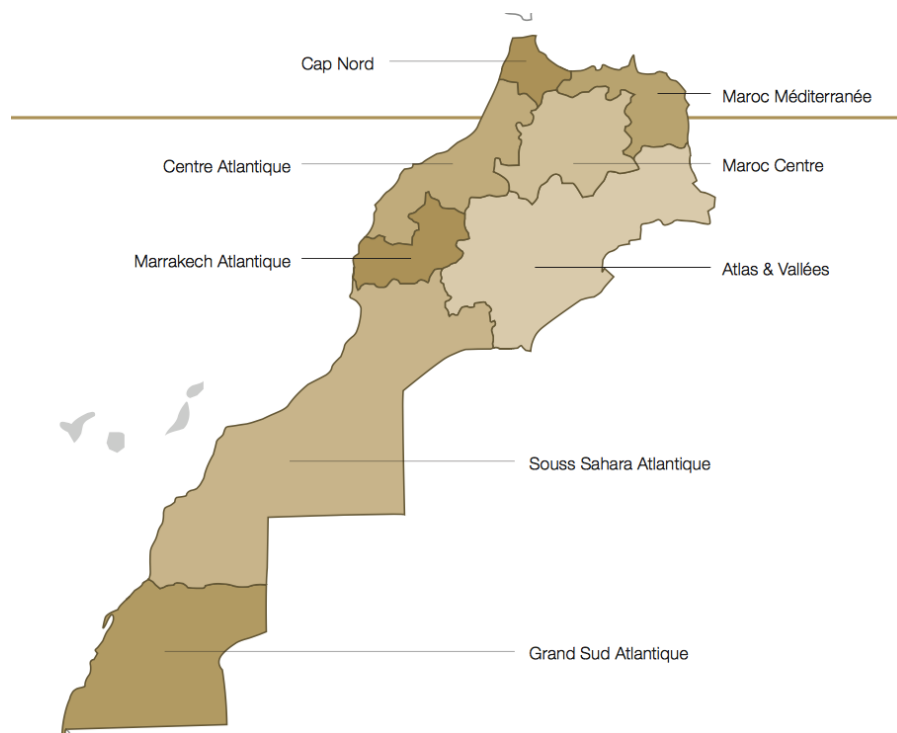
¹⁴⁸ Kingdom of Morocco, Minister of Tourism and Handcrafts, Department of Tourism, *Vision 2020, Development Strategy of Tourism*, 2007, p 25 <http://www.orientalinvest.ma/telechargementfichiers/tourisme/Plaque-2020-FR-bat.pdf>, last accessed 15.07.17

¹⁴⁹ Kingdom of Morocco, Minister of Tourism and Handcrafts, Department of Tourism, *Vision 2020, Development Strategy of Tourism*, 2007, p 25 <http://www.orientalinvest.ma/telechargementfichiers/tourisme/Plaque-2020-FR-bat.pdf>, last accessed 15.07.17

“Sustainability at the heart of the strategy of tourism development in “Vision 2020.””¹⁵⁰

In order to foster the development of eco-tourism within the Kingdom, Morocco has taken a number of initiatives including the introduction of a number of eco labels to be used in the tourism industry such as the Green Key¹⁵¹ for hotels and the Blue Flag¹⁵² for beaches in collaboration with Mohammed VI Foundation for the Protection of the Environment¹⁵³. In its new plan “Vision 2020” which was published in 2010, the Kingdom announced its intention to diversify the offer geographically (most of the touristic activity is still focused on Marrakech and Agadir) through the creation of 8 new tourist destinations including some in the occupied territories. In its report, the Ministry itself includes Western Sahara on the Moroccan map and even dedicates a specific section to the projects that are to be developed in the region.

“Territory Planning and Development of all of the Moroccan Territories”



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¹⁵⁰ Royaume du Maroc, Ministère du Tourisme, du Transport Aérien, de l'Artisanat et de l'Economie Sociale, *Tourisme Durable et Stratégie, Vision 2020, Tourisme Durable et Vision 2020* <http://www.tourisme.gov.ma/fr/vision-2020/tourisme-durable/tourisme-durable-strategie>, translation from French.

¹⁵¹ In French, la Clef Verte.

¹⁵² In French, le Pavillon Bleu.

¹⁵³ In French, Fondation Mohammed VI pour la Protection de l'Environnement.

¹⁵⁴ Kingdom of Morocco, Minister of Tourism and Handcrafts, Department of Tourism, *Vision 2020, Development Strategy of Tourism*, 2007, p 25

The strategy related to tourism prides itself of focusing on sustainability at every step of life of the touristic product, whether it is to do with the monitoring of sustainability, the integration of environmental concerns within the charts provided to customers or the sensitisation and valorisation of the different initiatives put in place.

This has had a significant impact on the perception of the Moroccan touristic offer on the international scene. Indeed the country has managed to portray itself as having become one of the leaders in eco-tourism.¹⁵⁵ Morocco has been an active member of the International Working Group of experts on Measuring Sustainable Tourism. The country has also contributed to the creation of an International Partnership for Sustainable Tourism which it chaired from 2013 to 2015. In addition, in April 2016, the Minister of Tourism has been awarded in Cape Town the “African Responsible Tourism Award” for “Best Public Policy”.¹⁵⁶

The speech held by Nada Roudies, the Secretary General of the Tourism Minister and the President of the UN Sustainable Tourism Program is very illustrative of the Rabat’s position on eco-tourism:

*“I believe that we can be proud of the contribution made by Morocco in favour of the recognition of sustainable tourism as a real tool for development on an international level. Today sustainable tourism has made its place onto the list of the Millenium Sustainable Development Goals that have been recently adopted by the United Nations. This is the result of 10 years of Moroccan mobilisation and presence within all international bodies in place to foster sustainable development whether in the context of International Working Group of experts on Measuring Sustainable Tourism or the Global Partnership for Sustainable Development that Morocco.”*¹⁵⁷

¹⁵⁵ Morocco Leads the Green Revolution (AlJazeera) 25.04.2010, <http://www.aljazeera.com/focus/2010/04/201042417429809491.html>, Arthur Neslen *Morocco to Give 600 Mosques a Green Makeover* (The Guardian) 5.09.17,

¹⁵⁶ Royaume du Maroc, Ministère du Tourisme, du Transport Aérien, de l’Artisanat et de l’Economie Sociale, *Tourisme Durable et Stratégie, Vision 2020, Tourisme Durable et Vision 2020* <http://www.tourisme.gov.ma/fr/vision-2020/tourisme-durable/tourisme-durable-strategie>, last accessed 15.07.17, translation from French.

¹⁵⁷ Translated from French. “Je pense que nous pouvons être fiers de la contribution du Maroc pour faire reconnaître le tourisme durable comme un réel levier de développement au niveau international. Aujourd’hui le tourisme durable a sa place au niveau des objectifs de développement durable du millénaire qui viennent d’être adoptés par les Nations Unies. C’est 10 ans de mobilisation du Maroc et de présence au niveau de toutes les instances internationales qui ont été mises en place pour promouvoir le tourisme durable que ce soit dans le cadre du groupe de travail international pour le tourisme durable qui a été issu du processus de Marrakech ou bien le partenariat mondial pour le tourisme durable.”

iii. The Dakhla Bay: the face of eco-tourism:

As demonstrated above, tourism is of capital importance in the country's economy, with eco-tourism appearing as a quickly growing sector. The so-called Southern Provinces (which are effectively the occupied part of Western Sahara) however, have until very recently remained impermeable to the trend. A 2013 report from Morocco's Economic, Social and Environmental Council (Conseil Economique, Social et Environnemental, CESE) found that tourism accounted for just 0.31% of the southern provinces' GDP in 2011 and 2% of its employment rate¹⁵⁸ Those numbers are in stark contrast with the ones previously mentioned on a national level. In order to tackle this issue, the government has placed a particular emphasis on the development of the tourist industry in this region; the Plans "Vision 2020" and "Azur 2020" directly provide for measures to facilitate the development of tourism capacity in an eco-friendly manner.¹⁵⁹

The international community has been very responsive to this narrative turning the occupied territories into the symbol of tourism with an ethical face. Indeed, a significant amount of articles have been published advertising this region as a green centre for international sports, appealing to an eco-conscience customer base while entirely silencing the legal and ethical issues associated with it.¹⁶⁰ In addition, a number of travel agencies based in Europe and the US have consistently mislabelled the location being within the Moroccan territory¹⁶¹. As expressed by the ICJ recently, the sale of products originating from Western Sahara cannot fall under the EU-Morocco Trade Agreement as Western Sahara is not a part of Morocco; in that sense it appears to be clear that the

Film Institutionel, Tourisme Durable au Maroc,

https://www.youtube.com/watch?v=CaKXZ_NYIHE&index=12&list=WL, last accessed 15.07.17

¹⁵⁸ Oxford Business Group, Morocco expanding tourism infrastructure in Southern Provinces, <https://www.oxfordbusinessgroup.com/analysis/morocco-expanding-tourism-infrastructure-southern-provinces>, last accessed 15.07.17

¹⁵⁹ Kingdom of Morocco, Minister of Tourism and Handcrafts, Department of Tourism, *Vision 2020, Development Strategy of Tourism*, 2007, p 25

<http://www.orientalinvest.ma/telechargementfichiers/tourisme/Plaquette-2020-FR-bat.pdf>, last accessed 15.07.17

¹⁶⁰ Audrey Chauvet *COP22: Le Maroc Mise sur un Tourisme "Durable"* (20 Minutes) 9.11.16, <http://www.20minutes.fr/planete/1957967-20161109-cop22-maroc-mise-tourisme-durable>, last accessed 15.07.17, *Le Point Afrique Tourisme Durable, Megaprojets: Comment le Maroc Veut Concilier les Deux*, 28.01.16, http://afrique.lepoint.fr/economie/tourisme-durable-megaprojets-comment-le-maroc-veut-concilier-les-deux-28-01-2016-2013700_2258.php, last accessed 15.07.17, *Euromews Road to COP22: Green Tourism in Marrakech*, 22.10.16, <http://www.euronews.com/2016/10/22/road-to-cop22-green-tourism-in-marrakech> last accessed 15.07.17

<http://www.leconomiste.com/article/1010684-dakhla-renforce-son-offre-de-tourisme-durable>,

¹⁶¹ CF ANNEX 2

mislabelling of products with regards to their location (here packaged holidays or hotel stays) would be just as problematic.

The case of Dakhla is particularly striking with the establishment of tourist facilities in a zone that until then used to be entirely off the tourist radar. The government is hoping to confirm an increase in the trend by upping the hosting capacity from 600 to 3800 by 2020. In addition, the plan sets targets of 114 000 visitors and the creation of 4 260 new jobs by the same date.¹⁶² The Southern Office of the General Confederation of Moroccan Companies (Confédération Générale des Entreprises du Maroc, CGEM) reported in 2015 that investments in the region were expected to reach 6 billion dirhams (or 653 millions euros) by the end of the year with real estate, infrastructure and tourism to receiving around 2.7 billion dirhams (or 294 million euros).¹⁶³

“Construction company El Moussaoui is set to build a Dh20m (€2.2m) hotel in the Fout El Oued area, which is expected to create 60 jobs. An ecotourism golf resort, valued at Dh10m (€1.1m), is also being constructed in Fout El Oued and is set to create as many as 47 local jobs. In the city of Laâyoune, a 60-room hotel with 88 villas is being planned. The Dh47.5m (€5.2m) project, which is being handled by Laâyoune Développement, will expand new tourism capacity in one of the most important urban centres in the southern provinces, generating some 200 jobs. International players are also taking note of opportunities in the region. In 2013 the Ministry of Tourism (MoT) and the Société Marocaine d’Ingénierie Touristique signed a memorandum of understanding with the UAE’s Al Shafi Group to establish a Dh1bn (€108.8m) luxury eco-tourism resort in the Dakhla area.”¹⁶⁴

The creation of employment in the region might appear to be positive. However Saharawis have consistently been discriminated in the sector of employment leading to higher unemployment rates being much within the indigenous population than the Moroccan one living in the same region.¹⁶⁵ Despite the fact that no study has been

¹⁶² Royaume du Maroc, Ministère du Tourisme, du Transport Aérien, de l’Artisanat et de l’Economie Sociale, *Territoires Touristiques, Grand Sud Atlantique, Situation Géographique* <http://www.tourisme.gov.ma/fr/territoires-touristiques/grand-sud-atlantique>, last accessed 15.07.17

¹⁶³ Oxford Business Group, Morocco expanding tourism infrastructure in Southern Provinces, <https://www.oxfordbusinessgroup.com/analysis/morocco-expanding-tourism-infrastructure-southern-provinces>, last accessed 15.07.17

¹⁶⁴ Oxford Business Group, Morocco expanding tourism infrastructure in Southern Provinces, <https://www.oxfordbusinessgroup.com/analysis/morocco-expanding-tourism-infrastructure-southern-provinces>, last accessed 15.07.17

¹⁶⁵ Western Sahara Resources Watch *Rassemblement des diplômés chômeurs Saharais à Rabat*, 2010 <http://www.wsrw.org/a198x1544> last accessed 15.07.17

carried out in this specific case, it is unlikely for a radically different situation to be taking place. Saharawis are therefore not expected to see benefits trickling down from this trend despite their land being exploited. This, as explained in Chapter I¹⁶⁶, would be in direct violation of the law of belligerent occupation. However and as this information is not available from reliable sources at the moment, the author believes that the stronger and peremptory argument that is to be made in this case revolves around consent or its lack thereof. Indeed, consent was never sought from the local population¹⁶⁷ and all contracts have been signed with the Moroccan government, in clear violation of the law of permanent sovereignty over natural resources as above explained. Therefore and as it is the case with wind farming and Siemens, the fact that the exploitation of natural resources in that case does not contribute to the depletion of Saharawi resources is not sufficient to render such activity lawful.

¹⁶⁶ SEE ABOVE

¹⁶⁷ Western Sahara Resources Watch *UN Committee Concerned of Lack of Saharawi Consent over Resources*, 2011
<http://www.wsrw.org/a105x3627> last accessed 15.07.17

IV. Corporate Accountability:

A. Social Corporate Responsibility or voluntary accountability:

Despite no definition being universally accepted at the moment, the one provided by the European Commission appears to be the most commonly agreed upon as it includes the social and environmental aspect under the sustainability label as well as emphasising the voluntary character of these responsibilities.¹⁶⁸

*“Corporate Social Responsibility (CSR) is “a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis”.*¹⁶⁹

Social rights have traditionally be associated with State responsibility. However, some non-state actors have been involved in the debate increasingly over the past decades. Social corporate responsibility appears to be one of those developing areas of law and policy. The concept appears in the 1950's in the United States as a response to some ethical and religious considerations, the main objective being the conciliation between economic and social expectations.¹⁷⁰ The idea behind such theory is that social rights are to transcend the legal person of the corporation and trickle down to the employees. This ideology has gained prevalence amongst the public with the rise of globalisation and its pitfalls being every time more extreme.¹⁷¹ Relocations, for example, have contributed to the marginalisation of workers rights as the Global South tends to maintain lighter the Europe regulations in this regard.¹⁷²

In the light of this historical development and as the State was always expected to be the primary protector of workers' rights, the voluntary aspect of social corporate

¹⁶⁸ Ivana Rodie *Responsabilité Sociale des Entreprises – le Développement d'un cadre Européen* (Mémoire présenté pour l'obtention d'études approfondies en études européennes à l'Institut Européen de l'Université de Genève (2007) p 13

<https://www.unige.ch/gsi/files/4014/0351/6367/RodicRSE.pdf>, last accessed 15.07.17

¹⁶⁹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions a Renewed EU Strategy 2011-14 for Corporate Social Responsibility, p 3

<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52011DC0681>, last accessed 15.07.17

¹⁷⁰ Claire Marzo, *La Responsabilite Sociale des Entreprises, À mi-chemin entre la soft law et le jus cogens : la question de l'effectivité de la protection des droits sociaux par les entreprises multinationales* (Revue des Droits de l'Homme) 2012, p 409

¹⁷¹ Michel Capron *La Responsabilite Sociale d'Entreprise* (L'Encyclopedie du Developpement Durable, Editions des Recollets, n9) Juillet 2009, p 2

¹⁷² Claire Marzo, *La Responsabilite Sociale des Entreprises, À mi-chemin entre la soft law et le jus cogens : la question de l'effectivité de la protection des droits sociaux par les entreprises multinationales* (Revue des Droits de l'Homme) 2012, p 409

responsibility is understandable; it was originally to be understood as a further step that some companies were willing to take in order grant their workers with extra-rights. In addition, it is undeniable that the development of social corporate responsibilities is to be linked with public relations issues.¹⁷³ As working practices have evolved, consumers, non-governmental organisations and other social actors have made a point to investigate and broadcast the treatment of workers imposed by big corporations. Nike was one of the first companies to be accused of using sweatshops and contracting children for the manufacturing of their items. The recurring scandals following the company since the 1970's have undeniably impacted the image of the brand to the extent that a number of reforms have been implemented over the years in order to redeem the brands' image.¹⁷⁴ However and maybe more importantly, "Nike spends more money on advertising and promoting the reputation of its products than most other companies in the world -- \$1.13 billion in 1998. Contrast this vast sums with the money Nike spends on philanthropy in the countries where its products are made. In Indonesia, for example, it has spent \$100,000 since 1998 on continuing education programmes for Nike workers and \$150,000 on small loans to unemployed and disadvantaged people."¹⁷⁵ Nike appears to be spending outrageously more on broadcasting their so-called ethical programs than in those programs themselves. In this context, the sustainability and ethics central rhetoric used by the company appears to be clearly driven by public relation concerns rather than genuinely ethical ones.

One of major issues related to social corporate responsibilities is the lack of enforcement mechanisms that accompany those measures. As previously mentioned, the voluntary character of those responsibilities are a key component to them. In this context and in an attempt to "reform" social corporate responsibilities, some governments, the European Union as well as international Organisations such as the United Nations have attempted to regulate and create a framework. This was the case with the United Nations Global Compact, an Kofi Annan initiative, that aims at promoting and guaranteeing the protection of Human Rights, le respect of fundamental working and environmental rights as well fighting corruption.¹⁷⁶ Since 2001, the European Union has also invested in the promotion of social corporate responsibilities

¹⁷³ Robert L. Heath and Michael Ryan *Public Relations' Role in Defining Corporate Social Responsibility* (Journal of Mass Media Ethics, Exploring Questions of Media Morality, Volume 4) 2009

¹⁷⁴ Sharon Beder Putting the Boot In (The Ecologist 32(3)) April 2002, p 25

¹⁷⁵ Sharon Beder Putting the Boot In (The Ecologist 32(3)) April 2002, p 26

¹⁷⁶ United Nations Global Compact, <https://www.unglobalcompact.org/what-is-gc>

by developing a number of policies emphasising the importance for businesses to evolve with a sustainable mindset.¹⁷⁷ In addition, the International Organisation for Standardization (ISO) has initiated the project of setting up an international norm with regards to social corporate responsibility.¹⁷⁸

B. The case of Siemens:

As the information available with regards to the social corporate responsibilities of companies in Dakhla appears to be unavailable to the public, this paper will focus on the case of Siemens solely. Being a major company, Siemens through its website regularly publishes reports with regards to its internal policies and their evolution which will be used in this analysis.

Siemens prides itself of being a socially responsible firm which strives to maintain ethics at the core of its business model. Their latest report regarding sustainability quote:

“In 2015, all 193 UN member states adopted the Agenda 2030 for Sustainable Development and agreed on the 17 sustainable development goals (SDGs). For us at Siemens, sustainable development is the means to achieve profitable and long-term growth. We have a clear commitment to think and act in the interest of future generations, achieving a balance between Profit, Planet and People. (...) Sustainability at Siemens is a key enabler of our strategy program. We are guided by responsible business practices in our interactions with external and internal stakeholders and we walk the talk within our own operations with regard to environmental and social aspects. We are convinced that sustainability is a business opportunity, especially in the sense of energy and resource efficiency, and a key element for our aim to be the employer of choice.”¹⁷⁹

The company emphasises its commitment to the ecology and the development of green energies to sustain it. As previously mentioned, in the case of Western Sahara, Siemens

¹⁷⁷ European Commission, Growth, Internal Market, Industry, Entrepreneurship and SME's *Corporate Social Responsibility (CSR)*, http://ec.europa.eu/growth/industry/corporate-social-responsibility_en last accessed 15.07.17

¹⁷⁸ Michel Capron *La Responsabilite Sociale d'Entreprise* (L'Encyclopedie du Developpement Durable, Editions des Recollets, n9) Juillet 2009, p 2

¹⁷⁹ Siemens *Sustainability Information 2016*, p 6
<https://www.siemens.com/content/dam/webassetpool/mam/tag-siemens-com/smdb/sustainability/sustainability/documents/13067-siemens-sustainability-information-2016-neu.pdf> last accessed 15.07.17

indeed has contributed to the establishment of a number of infrastructures producing green energy. In addition, some further projects involving solar energy have been discussed with the Moroccan government. Sustainable development, the respect and protection of our environment are obviously commendable goals. However, skepticism with regards to the genuine intentions of the company is understandable as over time many have used this rhetoric for public relations purposes. For example, the tobacco giant Philip Morris had spent in 1999 over 75 million dollars in donations towards charities. However, the company had the same year spent over 100 million in a massive advertisement campaign highlighting that fact.¹⁸⁰ This case being far from an isolated incident illustrates the highjacking of the ethical rhetoric for the purpose of profit. Indeed one of the points that has consistently been stressed by Siemens in the case of Western Sahara is that the exploitation in place is a sustainable one: indeed, wind is a renewable source and Siemens therefore cannot be accused of depleting Saharawi resources. However, it is important to highlight the fact that the energy produced in the wind farms operated by Siemens powers directly the phosphate mine of Bou-Craa. In this context, the argument of Siemens appears to fall flat.¹⁸¹

In addition, Siemens prides itself of having an excellent track record with regards to its compliance with the law.

*“For Siemens, integrity means acting in accordance with our values – responsible, excellent and innovative – wherever we do business. A key element of integrity is compliance: Adherence to the law and to our own internal regulations. We have zero tolerance for corruption and violations of the principles of fair competition, as well as for other violations of applicable law – and where these do occur, we rigorously respond.”*¹⁸²

The company has been a participant of the Global Compact since 2003. In addition, it has received an number of awards praising the sustainability of the policies put in place by the firm. The Financial Times Stock Exchange (FTSE) fir example featured Siemens

¹⁸⁰ Ivana Rodie *Responsabilité Sociale des Entreprises – le Développement d’un cadre Européen* (Mémoire présenté pour l’obtention d’études approfondies en études européennes à l’Institut Européen de l’Université de Genève (2007) p 8

<https://www.unige.ch/gsi/files/4014/0351/6367/RodicRSE.pdf> last accessed 15.07.17

¹⁸¹ Western Sahara Resources Watch *Report: Moroccan green energy used for plunder*, 2016

<http://www.wsrw.org/a243x3614> last accessed 15.07.17

¹⁸² Siemens *Sustainability Information 2016*, p 8

<https://www.siemens.com/content/dam/webassetpool/mam/tag-siemens-com/smdb/sustainability/sustainability/documents/13067-siemens-sustainability-information-2016-neu.pdf> last accessed 15.07.17

in its FTSE4Good series. The FTSE4Good index was created to shed light onto companies that demonstrate strong Environmental, Social and Governance (ESG) practices. Those are measured against globally recognized standards. Oekom its “Prime” label to the company, thereby welcoming Siemens into the family of firms whose shares on the stock market are qualifying as having an “ecological and social perspective”. EcoVadis also granted Siemens “Silver recognition level”, which is reserved to sustainable suppliers.¹⁸³

However and as demonstrated previously, the exploitation of renewable natural resources in the occupied territory of Western Sahara is extremely problematic. Despite not directly contributing to the depletion of Sahara resources as the energy in question is produced by Siemens using renewable resources, the it provides 95% of the energy required for the operating of the nearby phosphate mine is to say the least questionable.¹⁸⁴ Although the exploitation of natural resources is authorised under the law of belligerent occupation in some circumstances, the clear restrictions that are part of the framework cannot be ignored. The sheer volume and the speed at which phosphate is being extracted appears to be in direct contradiction with said framework.¹⁸⁵

If this fact was to be ignored and that the focus was put solely onto renewable resources overlooking the use that is made of the energy created, the same conandrum would not arise as resources are not being depleted. However, by not requiring the indigenous population’s consent with regards to said exploitation, Siemens is in direct violation of the law of permanent sovereignty over natural resources. Furthermore, no evidence was ever brought forward by the company regarding the benefits experienced by the Saharawi population from the wind farming (whether in the form of employment or redistribution of profits). Indeed as as demonstrated above, this criterion is key in order for said exploitation to be within the boundaries of the law of belligerent occupation. In this context, it is very doubtful for Siemens policies in Western Sahara to be complying with international law at large. In the light of these facts, the constant

¹⁸³ Siemens *Sustainability Information 2016*, p 7

<https://www.siemens.com/content/dam/webassetpool/mam/tag-siemens-com/smdb/sustainability/sustainability/documents/13067-siemens-sustainability-information-2016-neu.pdf> last accessed 15.07.17

¹⁸⁴ Western Sahara Resources Watch *Report: Moroccan green energy used for plunder*, 2016 <http://www.wsrw.org/a243x3614> last accessed 15.07.17

¹⁸⁵ Western Sahara Resources Watch *Report: Moroccan green energy used for plunder*, 2016 <http://www.wsrw.org/a243x3614> last accessed 15.07.17

emphasis put by the company in its marketing campaigns and the ecological aspect of their practices under the framework of sustainability while entirely silencing the legal and social issues that arise in this context clearly amounts to greenwashing.

Conclusion:

In order to understand the Saharawi conflict, the complex history that resulted in the present situation cannot be overlooked. The colonial past of the territory constitutes until this day one of the main factor for the legal road-block currently being faced. By abandoning its colony without taking its responsibilities according to the UN Charter and international law, Spain has effectively thrown the Saharawis to the Moroccan lion, trading their future and their land as a mere commodity in the international relations game. After years of war and hardship, the majority of this people is still precariously living as refugees in the Algerian desert. The international community whether it is through the MINURSO or other United Nations or legal bodies, has not been able nor willing to restore justice in that part of the world.

Meanwhile and as time passes, Morocco has progressively and efficiently consolidated its control over the land and is shamelessly broadcasting its enthusiasm as more foreign investors are knocking on the “Southern Provinces” door. As the recognition of the illegality of Morocco’s presence and in the territory as well as the enforcement of such judgment appear to be oneiric, some have attempted to contribute to the retreat of the Moroccan forces through other means. As Raymond Aron asserted “money is the sinews of War”¹⁸⁶ and in this war, natural resources are the golden ticket. Thus, curtailing foreign investment in the territory appears to be a useful tool in the pressuring of Morocco; indeed, the tremendous figures that have been spent by Rabat to maintain the occupation would not be financially sustainable if not balanced by the profit made in the region.

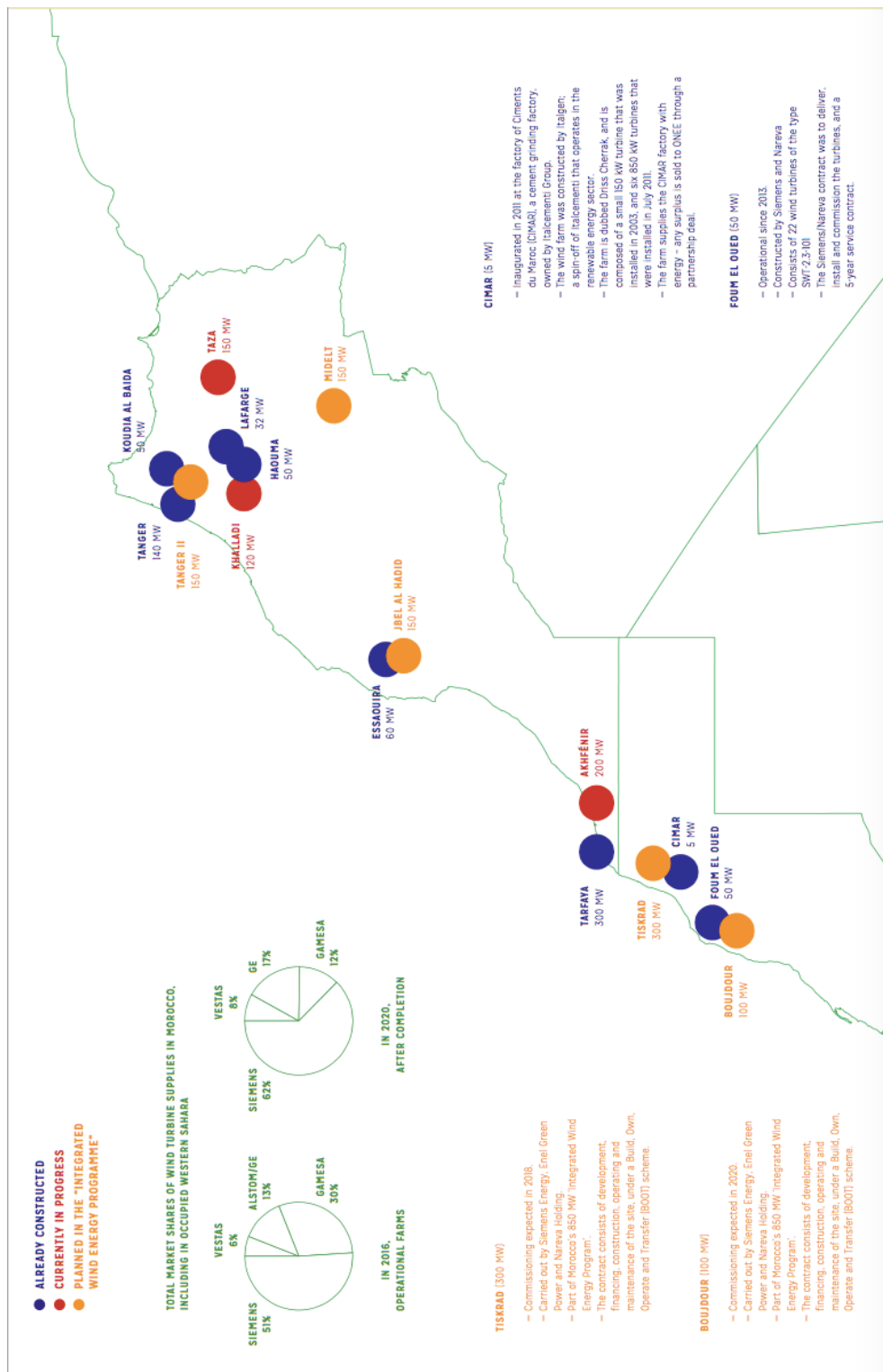
Although the exploitation of natural resources under belligerent occupation is not always in violation of international law, very strict restrictions must be observed. A factor in determining the lawfulness of the exploitation of any resource under that framework is the benefit that must be acquired by the victims of the occupation. In addition, as Western Sahara is also a non-self-governing territory, Saharawis are in addition entitled to protect their resources under the framework of permanent sovereignty over natural resources. In this context, the consent of the indigenous people with regards to the use of their resources is absolutely crucial. As demonstrated in the

¹⁸⁶ “L’argent est le nerf de la guerre”, Raymond Aron, *Paix et Guerre entre les nations*, p.249 (Calman-Lévy) 1962

Siemens case study with regards to wind-farming and the one on eco-tourism in the Dakhla Bay, those requirements have not been met. Therefore, the illegality of those enterprises appears to be striking.

If Moroccan departure is to be encouraged by a negative budgetary balance in the region due to the lack of foreign investments, how can international corporations be convinced to withhold their capital? In this paradigm, consumers and civil society activists play a pivotal role. With the rise of conscious consumerism, companies have used greenwashing as a marketing tool to boost their profits by portraying themselves as ethical business actors. By exposing those practices as has been done above in the case of Siemens, conscious consumers are expected to redirect their investment towards truly ethical businesses. The pressure put on those companies through this means would very likely result in a disinterest in investing within the occupied territories which could in turn pressure Morocco to shorten or even put an end the occupation.

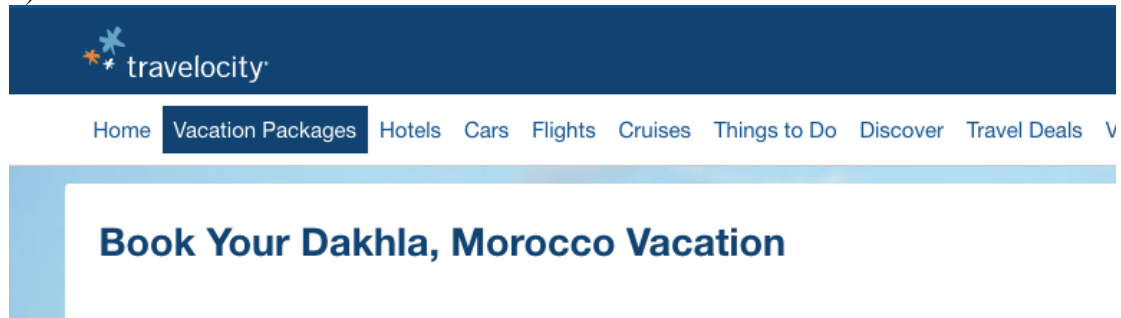
APPENDIX 1: Wind-Farm Map



Western Sahara Resources Watch *Powering the Plunder, What Morocco and Siemens are hiding at COP22, Marrakech, 201*

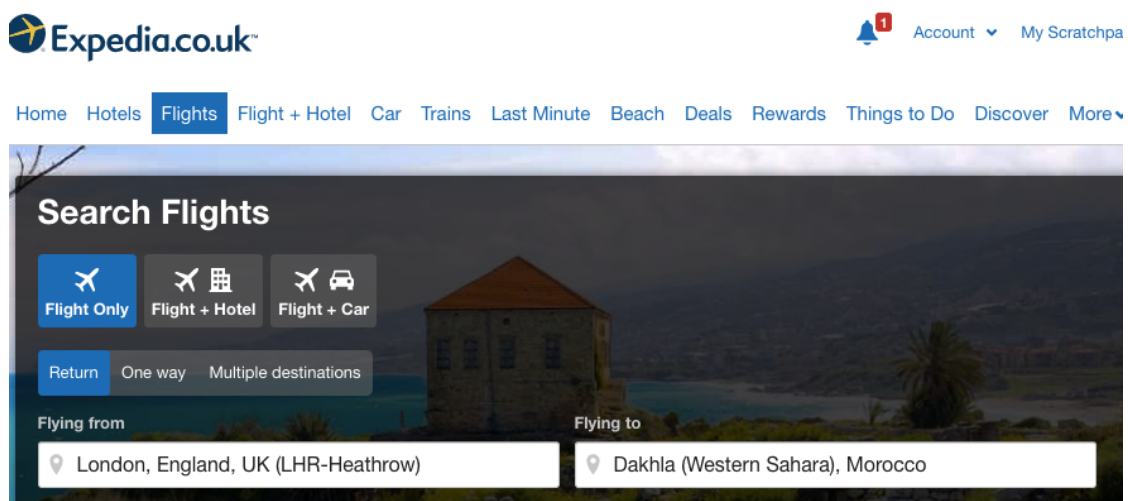
APPENDIX 2: Tourism in “Morocco”

1)



<https://www.travelocity.com/Dakhla.d3706.Destination-Travel-Guides>, last accessed 15.07.17

2)



<https://www.expedia.co.uk/Flights>, last accessed 15.07.17

3)



http://hotels.edreams.fr/search.fr.html?aid=350433;label=edr-sb-fr-conf;sid=07d8e658e0ecbb986a9a91d5f9676ce0;checkin=2017-07-09;checkout=2017-07-10;class_interval=1;dtdisc=0;fp_referrer_aid=344787;group_adults=1;group_children=0;inac=0;index_postcard=0;label_click=undef;no_rooms=1;offset=0;postcard=0;room1=A;sb_price_type=total;si=ai%2Cco%2Cci%2Cre%2Cdi;ss=dakhla;ss_all=0;ssb=empty;sshis=0&, last accessed 15.07.17

4)

The screenshot shows the homepage of lastminute.com.au. The header includes the site logo, navigation links (Home, Hotels, Flights, Experiences, Discover, Holidays, Car Hire, Subscribe, #livelastminute, Travel Insurance, Deals, Blog), and user account options (Account, My Scratchpad, My Trips, Support). A banner reads "the boss is coming look busy". The main section is titled "Dakhla Holidays". Below this, there are search filters: "Flight only" (selected) and "Flight + Hotel". The "Leaving from" field is set to "Helsinki, Finland (HEL-Vantaa)" and the "Going to" field is set to "Dakhla, Western Sahara, Morocco (VIL)".

<https://www.lastminute.com.au/Dakhla.d3706.Destination-Travel-Guides>, last accessed 15.07.17

Bibliography:

Books:

Von Glahn, *The Occupation of the Enemy Territory: A Commentary on the Law and Practice of Belligerent Occupation* (University of Minnesota Press; Minnesota Archive Editions) 1957

Gilles Perrault, *Notre Ami le Roi*, (Folio) 1992

Ian Scobbie *Natural Resources and Belligerent Occupation: Mutation Through Permanent Sovereignty* in *Human Rights, Self-Determination and Political Change in Occupied Palestinian Territories* edited by Stephen Bowen (Martinus Nijhoff Publishers) 1997

J. F Engers, *From Sacred Trust to Self Determination* (Netherlands International Law Review, Vol. 24 (1-2)) 2009

James Crawford *Creation of States in International Law* (Oxford: Oxford University Press) 2006

Juan Soroeta Licera *International Law and the Western Sahara Conflict* (Wolf Legal Producer) 2014

M. E. Chamberlain, "Decolonization: the fall of the European Empire", Oxford: Blackwell, 1999

Max Planck *Encyclopedia of Public International Law* (Oxford Public International Law) "Non-Self-Governing Territories", Makane Moise Mbengue, last update February 2013

Nico Schrijver, *Sovereignty over Natural Resources: Balancing Rights and Duties* (Cambridge University Press) 1997

Roger S. Clark *Western Sahara and the United Nations Norms on Self-Determination and Aggression* in "International Law and the Question of Western Sahara" edited by Karin Arts and Pedro Leite, (International Platform of Jurists for East Timor (IPJET) Publication) 2006

Stephan Hobe, *Evolution of the Principle on Permanent Sovereignty over Natural Resources* in *Permanent Sovereignty over Natural Resources* edited by Marc Bungenberg and Stephan Hobe (Springer International Publishing)

Toby Shelley *Endgame in Western Sahara, What Future for Africa's Last Colony?* (Zed Books) 2004

Tony Hodges *Western Sahara: Roots of a Desert War* (Lawrence Hill and co) 1983

Yoram Dinstein, *The International Law of Belligerent Occupation* (Cambridge University Press) 2009

Yutaka Arai-Takahashi, *The Law of Occupation: Continuity and Change of the International Humanitarian Law and its Interaction with International Human Rights Law*, Martinus Nijhoff Publishers, 2009

Journal Articles:

Ben Saul, *The Status of Western Sahara as Occupied Territory under International Humanitarian Law and the Exploitation of Natural Resources* (Global Change, Peace and Security) 2015

Carlos Ruiz Miguel *Los Acuerdos de Madrid, Inmorales, Ilegales y Políticamente Suicidas*, 6th April 2006

Claire Marzo, *La Responsabilite Sociale des Entreprises, À mi-chemin entre la soft law et le jus cogens : la question de l'effectivité de la protection des droits sociaux par les entreprises multinationales* (Revue des Droits de l'Homme) 2012

Ellinor Zeino-Mahmalat and Abdelhadi Bennis, *Environment and Climate Change in Morocco Diagnostic and Perspective* (Konrad Adenauer Stiftung), <http://gees.org/articulos/los-acuerdos-de-madrid-inmorales-ilegales-y-politicamente-suicidas>, last accessed 15.07.17

Ivana Rodie *Responsabilité Sociale des Entreprises – le Développement d'un cadre Européen* (Mémoire présenté pour l'obtention d'études approfondies en études européennes à l'Institut Européen de l'Université de Genève (2007), <https://www.unige.ch/gsi/files/4014/0351/6367/RodicRSE.pdf>, last accessed 15.07.17

Jane A. Hofbauer, *The Principle of Permanent Sovereignty over Natural Resources and its Modern Implications* (LL.M. Master Degree Thesis, Faculty of Law University of Iceland) 2011, p 2, https://skemman.is/bitstream/1946/4602/1/Jane_Hofbauer.pdf, last accessed 3rd of July 2017

Jim Motavalli *A History of Greenwashing: How Dirty Towels Impacted the Green Movement*, <https://www.aol.com/article/2011/02/12/the-history-of-greenwashing-how-dirty-towels-impacted-the-green/19628686/>, last accessed 15.07.17

Konstantina Isidoros *Awakening protests in Morocco and Western Sahara*, in “African Awakening, the Emerging Revolutions” edited by Firoze Manji and Sokari Akine (Pambazuka Press) 2012

Raymond Aron, *Paix et Guerre entre les nations*, p.249 (Calman-Lévy) 1962

Magali A. Delmas and Vanessa Cuerel Burbano *The Drivers of Greenwashing* (University of California, Los Angeles) 2011

Michel Capron *La Responsabilite Sociale d'Entreprise* (L'Encyclopedie du Developpement Durable, Editions des Recollets, n9) Juillet 2009

Raphael Fisera, *A People vs Corporations ? Self-Determination, Natural Resources and Transnational Corporations in Western Sahara* (Master's Thesis University of Bilbao) 2003

Ricardo Pereira and Orla Gough, *Natural Resource Governance and the Right to Self-Determination of Indigenous Peoples under International Law* (Melbourne Journal of International Law Vol 14)

Robert L. Heath and Michael Ryan *Public Relations' Role in Defining Corporate Social Responsibility* (Journal of Mass Media Ethics, Exploring Questions of Media Morality, Volume 4) 2009

Stephen Zunes *Western Sahara, Resources, and the International Accountability* (Global Change, Peace and Security) 2015

Toby Shelley *Behind the Baker Plan for Western Sahara* (Middle East Research and Information Project), 1st August 2003, last accessed 3rd July 2017, <http://www.merip.org/mero/mero080103>

Newspaper Articles:

El Observador, *Una obra gigantesca para un fracaso estratégico: una autentica ruina, El muro de la Vergüenza Marroquí*, <http://www.revistaelobservador.com/images/stories/REVISTAS/52/10EOBSAHARA4042muro.pdf>, last accessed 15.07.17

Whitney Shelfte, *Western Sahara's Stranded Refugees Consider Renewal of Morocco Conflict* (Washington Post, republished in The Guardian), <https://www.theguardian.com/world/2015/jan/06/morocco-western-sahara-referendum-delay> last accessed 15.07.17

20 minutos, *Trinidad Jimenez: "España no tiene responsabilidades en el Sahara Occidental"*, <http://www.20minutos.es/noticia/875537/0/trinidad-jimenez/sahara/responsabilidad/>, last accessed 15.07.17

Celest Hicks *Morocco Lights the way for Africa on Renewable Energies*, (The Guardian) November 2016, <https://www.theguardian.com/global-development/2016/nov/17/cop22-host-morocco-lights-way-africa-renewable-energy-2020>,

Reports and Specialized Press:

A. Ghezloun, A. Saidane, N. Oucher *Energy Policy in the Context of Sustainable Development: Case of Morocco and Algeria* (Energy Procedia, vol 50) 2014, p 538, <http://ac.els-cdn.com/S1876610214008017/1-s2.0-S1876610214008017->

[main.pdf?_tid=9b1dc12e-5c12-11e7-9398-00000aab0f01&acdnat=1498662244_90bb610e4337bd8529b6119668c46b80,](#) last accessed 15.07.17

Autonomy Plan, The Kingdom on the Mover, “The Autonomy Plan for Sahara” <http://autonomy-plan.org/the-autonomy-plan-for-sahara> last accessed 15.07.17

European Commission, *Forgotten Crisis Assessment* 2015, http://ec.europa.eu/echo/sites/echo-site/files/forgotten_crisis_assessment.pdf last accessed 15.07.17

International Committee of the Red Cross, *How does Law Protect in War, Usufructuary*” <https://casebook.icrc.org/glossary/usufructuary>, last accessed 5th July 2017

Israeli Laundry.org, *Greenwashing Introduction*, 23rd November 2011, <http://www.israelilaundry.org/2011/11/23/greenwashing-introduction/> last accessed 17.07.17

Jacopo Prisco *Why Morocco is leading the charge against climate change* (CNN) December 2016, <http://edition.cnn.com/2016/11/17/africa/morocco-green-energy/index.html> last accessed 15.07.17

Mark Spaulding *The Seven Deadly Sins of Greenwashing*, 2008, <http://sinsofgreenwashing.com/index94e4.pdf>, last accessed 17.07.17

Ministère Fédéral de l’Economie et de l’Energie Allemand et Ministère de l’Energie, des Mines, de l’Eau et de l’Environnement, Département de l’Energie et des Mines, Royaume du Maroc, *Partenariat Energétique Maroc-Allemagne PAREMA*, http://dkti-maroc.org/wp-content/uploads/sites/61/2017/04/170320_CP-PAREMA-BETD.pdf, last accessed 15.07.17

Oxford Business Group, Morocco expanding tourism infrastructure in Southern Provinces, <https://www.oxfordbusinessgroup.com/analysis/morocco-expanding-tourism-infrastructure-southern-provinces>, last accessed 15.07.17

Peter Grant *Climate Change Financing and Aid Effectiveness, Morocco Case Study, Final Report* (Organisation of Economic Co-Operation and Development (OECD))13 July 2011, <http://www.oecd.org/dac/environment-development/48458464.pdf> last accessed 15.07.17

Sharon Beder Putting the Boot In (The Ecologist 32(3)) April 2002,

Siemens *Sustainability Information* 2016,, <https://www.siemens.com/content/dam/webassetpool/mam/tag-siemens-com/smdb/sustainability/sustainability/documents/13067-siemens-sustainability-information-2016-neu.pdf> last accessed 15.07.17

The Greenwashing of the Occupation, *The Solar Energy Industry and the Israeli Occupation* (Who Profits) January 2017,

https://whoprofits.org/sites/default/files/greenwashing_the_occupation_web.pdf, last accessed 17.07.17

United Nations Report of the Committee on Information from Non-Self-Governing Territories, Official Records: Eighteenth Session, Supplement No. 14 (A/5514), Annexes 3

United Nations, “The United Nations and Decolonization, Non-Self-Governing Territories”, <http://www.un.org/en/decolonization/nonselfgovterritories.shtml>, last accessed 15.07.17

Western Sahara Resources Watch *Glendore is Departing Western Sahara*, 2005, <http://wsrw.org/a105x3879> last accessed 15.07.17

Western Sahara Resources Watch *Rassemblement des diplomes chomeurs Saharaouis a Rabat*, 2010, <http://www.wsrw.org/a198x1544> last accessed 15.07.17

Western Sahara Resources Watch *UN Committee Concerned of Lack of Saharawi Consent over Resources*, 2011, <http://www.wsrw.org/a105x3627> last accessed 15.07.17

World Bank, data from 2014, <http://data.worldbank.org/indicator/EG.IMP.CON.S.ZS?locations=MA>

Cases and Legislations:

Acuerdo Tripartito de Madrid entre España, Marruecos y Mauritania, 14th November 1975

Armed Activities on the Territory of the Congo [2005] ICJ Rep 168, 251–2 [244]

Statute of the International Court of Justice

Bolletín Oficial del Estado, Número 278, 20 Noviembre 1975, <https://www.boe.es/buscar/doc.php?id=BOE-A-1975-23743>, last accessed 15.07.17

C-104/16 P *Council v. Front Polisario*

Case Concerning East Timor (Portugal v. Australia), International Court of Justice (ICJ), 30 June 1995

Charte Nationale de l’Environnement et du Développement Durable) 2009

Constitution du Maroc, 2011

Covenant of the League of Nations, 1919

El Nazer et al. v. Commander of Judea and Samaria Region et al. (HC 285/81) 13 Israel Y. B. Rts. 368 (1983)

Eritrea Ethiopia Claims Commission, Partial Award / Prisoners of War / Ethiopia's Claim 4, The Federal Democratic Republic of Ethiopia and The State of Eritrea, 1st July 2003

High Court of Justice 9717/03, "Na'ale - Association for Settlement in Samaria of Employees of the Israel Aircraft Industry v. Higher Planning Council in Judea and Samaria, 58 (6) PD)

In re Krupp (1948) 15 Ann. Dig. 620

International Committee of the Red Cross (ICRC), Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 12 August 1949

International Committee of the Red Cross (ICRC), Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977

International Conferences, The Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, 18 th October 1907

International Court of Justice, Nicaragua v. United States of America, *Case Concerning Military and Paramilitary Activities In and Against Nicaragua*, 27th June 1986, Aspect of Jurisdiction

International Criminal Court Case Concerning East Timor (Portugal v. Australia), Judgement of 20 June 1995

International Military Tribunal in Nuremberg, The Trial of the Major War Criminals, (1947), Vol. 1

International Military Tribunal, The Trial against Goering, et al., Judgment of 1 October 1946,

Charte de l'Aménagement du Territoire (CnAT) 1993

Law 16-08 regarding self-production, Law 1309 authorising any person to produce energy from renewable sources, Law 47-09 regarding energy efficiency in the construction field

Ley Constitutiva de las Cortes, art. 14.I ,17th July 1942

Ricardo Pereira and Orla Gough, *Natural Resource Governance and the Right to Self-Determination of Indigenous Peoples under International Law* (Melbourne Journal of International Law Vol 14)

United Nations General Assembly, International Covenant on Civil and Political Rights, 16th December 1966

United Nations General Assembly, International Covenant on Economic, Social and Cultural Rights, 16th December 1966

United Nations Security Council ‘on the Situation concerning the Democratic Republic of the Congo’ (22 February 2001) UN Doc S/RES/1341;

United Nations, *Charter of the United Nations*, 24 October 1945

Western Sahara, Advisory Opinion of 16th January 1975, I.C.J. Reports 12

Western Sahara, Order of 3rd January 1975, I.C.J. Reports 6

UN Documents:

General Assembly 2625 *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States* 24th October 1970

General Assembly Resolution 1514 (XV), *Declaration on the Granting of Independence to Colonial Countries and Peoples* 14th December 1960

General Assembly Resolution 1541, “Principles which should guide members in determining whether or not an obligation exists to transmit the information called for under Article 73e of the Charter, 15 December 1960”,

General Assembly Resolution 1655 (XVI), “The situation with regard to the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples”, 27 November 1961

Security Council Resolution 690, “The Situation Concerning Western Sahara”, 29th April 1991

United Nations General Assembly Resolution 1803, *Permanent Sovereignty over Natural Resources*, 14th December 1962

United Nations General Assembly Resolution 3336, “Permanent Sovereignty over National Resources in the Occupied Arab Territories”

United Nations General Assembly Resolution 523 (XVII), *Integrated Economic Development and Commercial Agreement*, 12th January 1952

United Nations General Assembly Resolution 626 (VII), *Right to Exploit Freely Natural Wealth and Resources* 21st December 1952

UNSC Res 1355 (15 June 2001) UN Doc S/RES/1355;

UNSC Res 1457 (24 January 2003) UN Doc S/RES/1457;

UNSC Res 1493 (28 July 2003) UN Doc A/RES/1493;

UNSC Res 1533 (12 March 2004) UN Doc A/RES/1533.

United Nations, Meetings Coverage and Press Releases, Security Council Meeting 7933RD (night), *Security Council Extends Mandate of the United Nations Mission for Referendum in Western Sahara Unanimously Adopting Resolution 2351*, 30th April 2018, <https://www.un.org/press/en/2017/sc12807.doc.htm> last accessed 15.07.17

Policy Documents:

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions a Renewed EU Strategy 2011-14 for Corporate Social Responsibility, p 3, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52011DC0681>, last accessed 15.07.17

European Commission, Growth, Internal Market, Industry, Entrepreneurship and SME's *Corporate Social Responsibility (CSR)*, http://ec.europa.eu/growth/industry/corporate-social-responsibility_en last accessed 15.07.17

Film Institutionel, Tourisme Durable au Maroc, https://www.youtube.com/watch?v=CaKXZ_NYIHE&index=12&list=WL, last accessed 15.07.17

La Stratégie nationale pour la Protection de l'Environnement et le Développement Durable (SnPEDD))

Le Plan d'Action national pour l'Environnement (PAnE) 1993

Le Plan national d'Assainissement liquide (PnAl) et d'épuration des eaux usées, 1993

Le Plan national de gestion des Déchets Ménagers (PnDM) 1993

Le Plan national de lutte contre le Changement Climatique (PnCC) 1993

Royaume du Maroc, Ministère du Tourisme et de l'Artisanat, Département du Tourisme *Vision 2020, Stratégie du Développement Touristique* 2007, p 20, <http://www.orientalinvest.ma/telechargementfichiers/tourisme/Plaquette-2020-FR-bat.pdf>, last accessed 15.07.17

Royaume du Maroc, Ministère du Tourisme, du Transport Aérien, de l'Artisanat et de l'Economie Sociale, *Tourisme Durable et Stratégie, Vision 2020, Tourisme Durable et Vision 2020*, <http://www.tourisme.gov.ma/fr/vision-2020/tourisme-durable/tourisme-durable-strategie>, translation from French.

