

Introduction

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On 13 November 2020, the 29-year ceasefire between the Polisario Front and Morocco ended. The Moroccan army fired on Sahrawi citizens from the occupied part of Western Sahara who had formed a roadblock at Guerguerat, a village that lies in a demilitarised buffer zone between Moroccan-occupied Western Sahara and Mauritania. Polisario returned fire. At the time of writing, war continues, with Polisario targeting Moroccan military positions along the Moroccan-built berm, a 2700 km military wall fortified by landmines that separates Polisario-controlled Western Sahara from the Moroccan-controlled part of the territory.

This new war in Western Sahara was triggered by contentious politics surrounding natural resource exploitation, revealing the importance of renewed academic attention on this issue. Some Sahrawis and their supporters abroad have nicknamed the Guerguerat road, where the war broke out, the “plunder corridor.” The road itself is a Moroccan-built asphalted track, deemed illegal by the Polisario as it did not exist when the two parties to the conflict entered into the ceasefire agreement. The road was also condemned by the UN as it “involved activities that could be in violation of the ceasefire agreement” (UNSC Resolution S/2001/398: 2). Amongst the wider trade that passes via this route between occupied Western Sahara and Mauritania, one might find produce from occupied Western Sahara - tinned fish, for instance – bound for the Mauritanian port

of Nouadhibou. While finalising this Special Issue, the authors interviewed a Sahrawi protester that helped build the roadblock. He commented, “Our purpose was to close down the illegal breach at Guerguerat [...] [it’s] a gate through which Morocco passes our plundered natural resources to Mauritania and other countries.”¹

That the war was triggered by an incident at the Guerguerat roadblock illustrates immediately the link between the return to armed conflict and natural resource exploitation. But the role of natural resources in the Western Sahara conflict goes back much further. The abundant resources to be found in Western Sahara and their diversity is, according to several scholars, one of the main reasons – if not *the* reason – for Morocco’s reluctance to respect its previous engagements with the international community related to resolving the conflict in Western Sahara (Allan 2016, Camprubí 2015, Lalutte 1976), which, for the UN, is a decolonisation issue pending resolution.

As scholar Lino Camprubí (2015) has argued, the exploitation of natural resources in Western Sahara by multinationals is one of the major drivers behind the continued Moroccan occupation of the territory (2015). For this reason, the Office of the Legal Counsel and Directorate for Legal Affairs of the African Union Commission issued an opinion in 2015 on the legality of the Moroccan exploration and exploitation of Sahrawi natural resources that explicitly stated:

Member States of the UN and their companies are under obligation according to international law, UN Charter and other UN resolutions to refrain from helping in the perpetuation or legitimization of the colonial situation in Western Sahara by means of investments or exploration and/or exploitation of renewable or non-renewable natural resources and other economic activities in the Non-Self-Governing Territory, and should therefore refrain from entering into agreements/contracts with Morocco as the occupying Power (2015).

While the position of the African Union is clear, that of some of its member states is less so. Ten African states have opened consulates, or at least virtual consulates, in occupied Western Sahara, allegedly in exchange for economic incentives. One month into the new war in Western Sahara, the US, under the Trump administration, caused further uproar by becoming the first country in the world to recognise Moroccan sovereignty over Western Sahara in exchange for Moroccan recognition of Israel. This quid pro quo deal has political consequences in terms of its legitimizing and consolidation of two illegal occupations. And yet, in practical terms, it changes little. The US has a long history of arming the Moroccan military, and, along with Israel, helped build the aforementioned berm that bisects Western Sahara. While the US-Morocco Free Trade deal precludes produce from Western Sahara, US oil companies have been active in occupied Western Sahara since at least 2002. One of the first companies to drill for oil in Western Sahara's waters, in 2015, has its headquarters in Texas. In other words, for the US to undermine the Sahrawi people and its resources is nothing new. It should also be highlighted that the Trump administration's recognition has no legal effect. As Juan Soroeta Licerias (2021) points out, the deal violates the Sahrawi people's right to self-determination as asserted by the principal bodies of the UN in hundreds of resolutions, and the UN charter itself. The right of a people to self-determination is a cardinal principle in modern international law, and therefore, argues Soroeta Licerias (2021), in compliance with article 53 of the 1969 Vienna Convention on the Law of Treaties, any agreement that presupposes its violation is null and void.

Whilst conscious and attendant to the recent violent developments in the Western Sahara conflict and the role of the Trump administration in stoking the fires, this Special Issue moves beyond individual states such as the US to explore how non-state actors and international institutional

bodies deal with the highly political business of resource exploitation in Western Sahara.² It explores questions of how such actors identify, and in some cases denounce, the exploitation how these actors acquire the facts and figures related to an exploitation that has been ongoing for decades and involves companies and multinationals from all over the world, and looks at the methods and scale of the operations of non-state actors, who are sometimes very small groups of volunteers. For non-state actors who work to prevent the exploitation of Western Sahara's natural resources, we ask how they successfully 'force', or to put-it another way, 'convince' investors and companies to stop dealing in stolen Western Saharan goods. Moreover, we look at how the Polisario Front and Sahrawi Arab Democratic Republic respond to the efforts of these non-state actors, and related to this, how the Sahrawi political leadership uses the results of the immense technical labour, reports, and data provided by NGOs, court rulings, and the published positions of international institutions.³

The UN, AU, and EU have all published legal opinions on the exploration and exploitation of natural resources in Western Sahara. The International Court of Justice, and now also the European Union Court of Justice, the High Court of England and Wales and the South African Supreme Court have opined and ruled on the matter as well. The near future may also witness the involvement of French (Western Sahara Resource Watch 2018) and New Zealand courts who have recently accepted cases on various questions related to companies trading in goods from the occupied territories of Western Sahara (Hutching, 2020). However although there is a wealth of legal literature (as is highlighted in this Special Issue) arguing that it is illegal for Morocco or any other third party to exploit or deal in Sahrawi natural resources, some multinationals and even institutions, such as the European Union, have found new ways to reinvest and exploit these resources in violation of their own courts' rulings.⁴ How, then, can the Sahrawi people and their

legitimate UN-recognised representative, the Polisario Front, force these international actors to respect the law?

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Any discussion of a people’s sovereignty over its natural resources requires an examination of the degree of their political sovereignty over the territory where the resources are found, which is one of the reasons why the case of Western Sahara is particularly intriguing. Randi L. Irwin navigates the stormy waters of legality and sovereignty in her study of a case brought before the South African High Court in 2017: *Sahrawi Arab Democratic Republic and Another v Owner and Charterers of the MV ‘NM Cherry Blossom’ and Others*. In her article, the author explores how the SADR state utilised its limited history of sovereign recognition to real ends while building evidence to demonstrate its readiness to govern an independent Western Sahara. She shows how the South African Court established the admissibility of the case, which became a true judgment on the status of Morocco in Western Sahara as an occupation force.

In their analysis of two legal cases related to Western Saharan resources, Ángela Suárez-Collado and Davide Contini explore how the Court of Justice of the European Union, as a European institutional body, ruled on agreements concluded between the EU and Morocco in a pair of cases brought by the Polisario Front and the NGO Western Sahara Campaign UK. The writers address and attempt to answer specific questions arising from the legal disputes, primarily related to the consequences the rulings have had for the European Union's position on the conflict in Western Sahara; the implications for the exploitation of natural resources in the territory; and how the judgments have affected relations between the European Union and Morocco.

Two other contributors, Samara López-Ruiz and Maria Luisa Grande-Gascón, tackle a very specific subject related to Western Saharan natural resources: insurance funds and how their investment in international business can positively or negatively impact international law. The article highlights the good example set by the Norwegian and Swedish pension funds and the ethical investment strategies that they implemented that resulted in the divestment of holdings in several companies trading in the natural resources of Western Sahara.

In her examination of corporations involved in illegal trade in Western Sahara, Meriam Naïli demonstrates the impact of the gains achieved by non-state actors regarding the economic value of the territory for the Moroccan occupation.⁵ In fact, she argues that the prospect of conflict resolution is much more likely if Morocco is unable to profit from Sahrawi natural resources. The article traces the development of the campaigns against the exploitation of these resources, and where they succeeded at convincing funds and companies to cease their activities in the territory. However, it also reveals how some of these economic actors find hidden ways to resume business in the territory that escape the eye of established campaigns.

Raquel Ojeda-García, in turn, investigates the operating methods and resources of a variety of non-state actors to discover how they campaign and influence the other actors involved in the exploitation of Western Sahara's natural resources. She also explores how these non-state actors influence the Polisario Front, which has taken full advantage of the political and diplomatic possibilities offered by this new sphere of confrontation with Morocco to ultimately defend the right of the people of Western Sahara to self-determination and independence.

Finally, Isaías Barreñada Bajo offers a comparative perspective that analyses the negotiations between the French government and the non-self-governing territory of New Caledonia-Kanaky to provide a 'counter-lesson' of sorts to the actors involved in Western Sahara. Above all, he notes that the actions taken by France as the administering power to give the indigenous people control over their resources and, thereby, win their loyalty, actually resulted in an intensification of pro-independence sentiments in the territory, and predicts a complicated future for Morocco in its attempts to deal with the Western Sahara question.

Our aim is that this Special Issue will provide all interested readers with a better understanding of the importance of natural resources in the last decolonisation process in Africa and the role that non-state actors are playing in such a setting. Furthermore, we hope that the Issue provides vital insights into how the (historical) context of natural resource exploitation in Western Sahara has contributed to provoking the 2020 renewed war.

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¹ Interview with Joanna Allan, 20 November 2020, via telephone.

² Despite the fact that the UN recognises Western Sahara as a non-self-governing territory and Morocco as an occupying power since 1975, the EU Commission renewed trade agreements with Morocco, including Western Sahara, in complete violation of two verdicts issued by the European Court of Justice in 2016 and 2018, which clearly ruled that such agreements cannot and should not be applied to Western Sahara, as it is a distinct territory from Morocco.

³ European Court of Justice rulings from 2016 and 2018, in addition to South African High Court ruling from 2017.

⁴ The EU Commission signed new agreements with Morocco, including involving the waters adjacent to Western Sahara, despite the CJEU rulings.

⁵ The illegality of the Moroccan presence in Western Sahara has been well established by various UN bodies, especially the UN General Assembly, which explicitly described Morocco’s presence in the territory as an ‘occupation’ in two main resolutions (A/RES/34/37 (1979) and A/RES/35/19 (1980)), not to mention various legal opinions and rulings by institutions, such as the International Court of Justice, UN Legal Office, AU Legal Directorate, European Union Court of Justice and others discussed in the articles in this Special Issue. The African Union simply recognises Western Sahara as an independent state partially occupied by Morocco.