

Brussels
1 May 2019

To the attention of Mr Nicolas Theodoridis
Chief Executive Officer of Archirodon Group NV

Re. Archirodon Group NV's subsidiary in El Aaiun, Western Sahara

Dear Mr Theodoridis,

We at Western Sahara Resource Watch (WSRW) and the *Stichting Zelfbeschikking West-Sahara* are privileged to present you with our compliments. We are writing to you following media reports about Archirodon's decision to set up a subsidiary in Laayoune, Morocco.

According to Africa Intelligence (Issue 1334 of 4 April 2019), Archirodon "is targeting the port of Laayoune's modernization plans but also projects of phosphate giant OCP in the region".

However, "Laayoune" – or El Aaiun – is not located in Morocco, but in Western Sahara: the last colony in Africa, treated as such by the United Nations. Western Sahara is one of the last Non-Self-Governing Territories – a territory that is yet to complete the process of decolonization – but it is unique in that it is the only such territory that has not been appointed with an administering power. From a legal perspective, the administering power still resides with the former colonizer, Spain, which abandoned its colony in 1975.¹ As reiterated in four consecutive judgments of the Court of Justice of the European Union since 2015, Morocco does not have any sovereignty or international mandate to administer the territory.²

In violation of the Opinion of the International Court of Justice – which found no ties between Morocco and Western Sahara and stipulated the right of the Western Sahara people to self-determination - Morocco invaded the territory in 1975 and has gone on to annex large parts of the territory. Today, about three-quarters of Western Sahara are under Moroccan military control.

The part of Western Sahara that is under control of the Polisario Front – the Saharawi liberation movement – hosts the administrative institutions of the Saharawi Republic (the SADR), which is recognized by over 80 countries worldwide, and a full-fledged member of the African Union. Note that there is not a single country in the world that recognizes Morocco's claims to Western Sahara.

In 1991, the UN was able to broker a ceasefire agreement, and set up a UN Mission in the territory with a single mandate of organizing a self-determination referendum. That referendum has still not taken place, mainly due to Morocco's efforts to thwart the mission.

¹ See e.g. the decisions of the Spanish Criminal Appeals Court (Audiencia Nacional) of 4 July 2014 and 9 April 2015, confirming that Spain, not Morocco, is the administering power over Western Sahara. The official English translation of the July 2014 decision can be found here: wsrw.org/files/dated/2016-04-19/audiencia_nacional_4.7.2014_-_gdeim_izik.pdf

² See e.g. The Judgment of the General Court of the European Union, 10 December 2015, case T-512/12: Frente Polisario v Council of the European Union, §233: "The Kingdom of Morocco does not have any mandate granted by the UN or by any other international body for the administration of [Western Sahara]". Available via: www.curia.europa.eu.

The lingering conflict continues to have a high human and humanitarian cost. During Morocco's violent invasion, many Saharawis fled to the neighbouring Algerian desert, which today still hosts the Saharawi refugee camps that are home to over 170,000 people. These refugees survive in harsh desert conditions and on dwindling humanitarian aid. Saharawi refugees are separated from their relatives who stayed in their homeland by a military fortified wall that is over 2000 kilometres long, and home to one of the world's largest and densest minefields. Saharawis who live under the yoke of Morocco's occupation are victims of serious human rights violations that have been reported by the UN Human Rights Committee, in addition to credible international organisations such as Human Rights Watch, Amnesty International, and others.

Our organization monitors and comments on Morocco's taking of Western Sahara's natural resources – an activity that has been studied by the UN Legal Counsel in 2001. The UN Legal Opinion concluded that any such activity would be illegal if not carried out in accordance with the interests and the wishes of the people of the territory – as a natural corollary of their right to self-determination.

We assume that while carrying out a legal risk-assessment with regard to setting up a subsidiary in a conflict area, you'll be aware that the United Nations, the International Court of Justice and the Court of Justice of the European Union all state that Morocco does not have any legal basis, sovereignty or international mandate to administer the territory. Legal opinions from the United Nations, as well as separate court rulings from the EU Court of Justice and the High Court of South Africa, and reports by the UN Human Rights Committee and the UN Committee for Economic, Social and Cultural Rights, also state that economic activities in Western Sahara have a paramount legal prerequisite to be fulfilled in order for trade activities inside or affecting occupied Western Sahara to be permissible under international law: consent must be sought from the Saharawi people.³ This means that the Saharawi people (through their internationally recognized representative the Polisario Front) must consent to any commercial activity taking place on their occupied homeland. The Dutch Government has also issued a warning about making investments or doing business in Western Sahara, alerting companies about the risks stemming from the conflict that include reputational and financial damages.⁴

We would be grateful if you would answer the following questions:

1. As a corollary of the internationally recognized right to self-determination of the people of Western Sahara, and given the legal requirement of obtaining the prior, free and informed consent of the people of Western Sahara with regard to activities or projects in their land – as put forth by several UN Treaty bodies and the EU Court of Justice – what steps has Archirodon Group NV taken to obtain the consent of the people of Western Sahara through their political representation, the Polisario Front, in order to set up an office in Western Sahara?
2. When deciding to open a subsidiary in Western Sahara, was Archirodon Group NV aware of the fact that the Moroccan government holds no jurisdiction over the territory?
3. Does Archirodon Group NV agree with the Ministry of Foreign Affairs of the Netherlands⁵, the World Bank, and the Court of Justice of the European Union in line with the UN, that Western Sahara is a Non-Self-Governing Territory pending a decolonization process?

³ See e.g. the report by the UN Human Rights Committee of December 2016, here: <http://ccprcentre.org/files/documents/CCPR:C:MAR:CO:6.pdf>, and of the UN Committee on Economic, Social and Cultural Rights of October 2015, here: https://wsrw.org/files/dated/2015-12-09/cescr_morocco_2015_eng.pdf

⁴ <https://www.rvo.nl/westelijke-sahara>

⁵ Ibid.

We are convinced that it is not in the interest of Archirodon Group NV to become associated with the continued colonization and occupation of Western Sahara. We urge the company to immediately freeze its activity, contact the Polisario Front to solicit their consent to the envisioned activities, and inform the UN Mission in the territory (MINURSO), in order to avoid becoming entangled in the political project of Moroccanising Western Sahara and as such hindering the UN peace process.

Please do not hesitate to contact us should you require any further information on the above-raised issues. We thank you in advance for your consideration, and look forward to your response.

Kind regards,

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A copy of this letter has been sent to:

- HE Stef Blok, Minister of Foreign Affairs of the Netherlands
- HE Sigrid Kaag, Minister of Foreign Trade and Development Cooperation of the Netherlands
- HE Horst Köhler, UN Secretary General's Personal Envoy for Western Sahara