



Saharawi Arab Democratic Republic



Media release – Communiqué

For immediate release

Statement of the government of the Saharawi Arab Democratic Republic on the successful conclusion of a legal case in South Africa to recover phosphate rock illegally exported from occupied Western Sahara

Bir Lehlu, Western Sahara (24 February 2018). The government of the Saharawi Republic (the SADR) notes the successful conclusion of civil litigation proceedings in the High Court of South Africa to recover ownership of a cargo of phosphate rock illegally exported from the occupied area of Western Sahara.

On May 1, 2017, the 55,000 tonne cargo was detained aboard the Marshall Islands registered bulk carrier *NM Cherry Blossom* when the ship entered South Africa's Port Elizabeth. On June 15, the High Court concluded that the SADR had a *prima facie* claim to ownership of the cargo and directed that the claim could proceed to a trial on the merits. In July, the two companies which had mined and purported to own the cargo during its shipment to a would-be purchaser in New Zealand, Ballance Agri-Nutrients Ltd., withdrew from defending the case. A lengthy period of how the vessel charterer would recover its losses for the detention of the cargo – and therefore the *NM Cherry Blossom* as its carrying ship – then followed.

In an order issued on February 23, the High Court concluded that: (1) The SADR “is the owner of the whole of the cargo of phosphate presently laden on the motor vessel *NM Cherry Blossom*” and (2) “ownership in the phosphate has never lawfully vested” in the Moroccan state owned companies OCP SA and Phosphates de Boucraa SA “and they were, and are, not entitled to sell the phosphate to” Ballance Agri-Nutrients Ltd.

While it remains the policy position of the SADR government to insist upon and endeavour to have returned natural resources plundered from Western Sahara to that territory pending the completion of the Saharawi people's right to exercise self-determination, the fact of Western Sahara being under armed occupation makes such a result impractical. With clear, and uninterrupted title to the commodity aboard the *NM Cherry Blossom* now assured, it is anticipated a sale of it will now take place.



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Emhamed Khadad, member of the leadership of Polisario stated that, “The South Africa case is a part of the Saharawi people’s efforts to use international law to arrive at a just end to a vicious, illegal occupation and safeguard the right of our people to the most fundamental of human rights, self-determination. We will continue to pursue those people and corporate interests who directly plunder Western Sahara’s resources, and who are the knowing recipients of pillaged commodities. The Saharawi Republic is committed to the rule of law, and to successful trading relationships involving the resources of Western Sahara, both now and in the future.”

The result in South Africa is the part culmination of dual civil legal proceedings undertaken in May 2017. A parallel case in Panama resulted in a court-ordered detention of the Panamanian flag *Ultra Innovation* with a cargo of phosphate rock for Agrium Inc. in Vancouver. (In early 2018, that Canadian company merged with Potash Corporation of Saskatchewan Ltd. to create a new publicly-traded entity, Nutrien Ltd.)

On 25 January 2018, Chuck Magro, Nutrien's President and CEO, affirmed that the company has an intention to end its trade in phosphate rock from Western Sahara. Nutrien is a newly formed Canadian company following the merger in January this year between PotashCorp and Agrium. Mr. Magro confirmed that notice has been given to end imports to Canada, by a stopping of the contract previously in place with Agrium, “at the end of this year”.

The Saharawi government notes the abundant legal and reputational risks for those few purchasers of phosphate rock from occupied Western Sahara, namely the New Zealand companies Ballance Agri-Nutrients Ltd. and Ravensdown Fertiliser Co-operative Ltd., and India’s Paradeep Phosphates Ltd., the latter company in a joint venture with OCP SA.

The Saharawi government further observes the operational and legal risks for vessel interests – ship owners, charterers and managers – in trading in and carrying natural resources from occupied Western Sahara. The complexities, cost and loss of trading opportunity resulting in the *NM Cherry Blossom* case, after 299 days of its cargo being under detention, are instructive in this regard.



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Once again, the SADR government cautions shipping interests, including time charterers, to insulate themselves and their ships from such prospective liability and compensation-attachment proceedings. It is understood that voyage charterers and managing enterprises will not always disclose such risks. Therefore, the SADR government suggests contracts between Ship Interests prohibit the carriage of resources (or any commodity) from Western Sahara. An indicated charterparty term could something like the following:

“Charterers are not permitted to trade this vessel to El Aauin (also known as Laayoune) and Dakhla in Western Sahara.”

For more than four decades, the former Spanish colony of Western Sahara has been partly occupied under armed force with its original inhabitants, the Saharawi people, denied the opportunity to exercise their right of self-determination. This period has seen the continuing large-scale plunder of natural resources including phosphate mineral rock, the fishery of the Canary Current Large Marine Ecosystem, and sand aggregates. The illegal sale and export of such resources, confirmed as such most recently by the High Court of South Africa, is contrary to the fundamental principle of international law which assures the Saharawi people permanent sovereignty to their natural resources, and is a violation of international humanitarian law defined in the *Fourth Geneva Convention* of 1949 and the 1998 *Rome Statute* of the International Criminal Court. The would-be purchase of such resources has no certainty of right or enforceable title to them.

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