



Bir Lehlou, 28 May 2017

Excellency,

On 29 May 2017, the Council of the European Union is expected to decide on the proposal of the European Commission for a mandate to negotiate a revision of the 2000 EU-Morocco Association Agreement. The objective of this mandate is to seek the inclusion of Moroccan products originating illegally in Western Sahara under the trade preferences of that Agreement.

This proposal appears to stem from the landmark judgment of the Court of Justice of the European Union on 21 December 2016 that ruled that, on the basis of the principle of self-determination, the EU and the Kingdom of Morocco cannot include, either *de jure* or *de facto*, Western Sahara in their trade relations without the prior consent of the Sahrawi people.¹

As the UN-recognized representative of the people of Western Sahara², the Frente POLISARIO strongly rejects this proposal from the European Commission, which, if endorsed by the Council, would violate both the above-mentioned ruling of the Court and fundamental tenets of international law.

Firstly, according to the ruling of the Court, the consent of the people of Western Sahara is the only applicable criterion for any EU agreements with the Sahrawi territory. Consequently, the determination by the EU or the Kingdom of Morocco of what is beneficial or not to the interests of the people of Western Sahara is irrelevant.

Secondly, the Court refers explicitly to the “consent of the people of Western Sahara”.³ As such, any proposal that would seek instead the “consent of the population” of Western Sahara would directly contradict the ruling of the Court. Moreover, by differentiating between the Sahrawis living under Moroccan occupation and those living in the liberated zones or in the refugee camps, the Commission denies the very existence of the people of Western Sahara and their unity as a people, thereby violating their right to self-determination. As the vagueness of the term of population allows for the inclusion of the numerous Moroccan settlers in the occupied Sahrawi territory, the proposal of the European Commission also constitutes a flagrant violation of international humanitarian law.

Thirdly, any modification of the Association Agreement that aims to extend its scope of application to the occupied Sahrawi territory “under the jurisdiction of Morocco” will not offer a sound legal basis for EU trade with Western Sahara. It will only illustrate the intention of the EU to disregard the ruling of the Court and international law.

¹ Judgment of the CJEU, 21 December 2016, Council/POLISARIO Front, C-104/16 P, ECLI:EU:C:2016:973 (hereinafter “Case C-104/16 P”).

² Case C-104/16 P, paragraphs 35 and 105.

³ Case C-104/16 P, paragraph 106.

As recalled by the Court⁴, the Kingdom of Morocco never gained sovereignty over the Sahrawi territory, which it occupies illegally. Therefore, it cannot conclude international agreements applicable to Western Sahara.⁵

In particular, given the “separate and distinct status” of Western Sahara under international law⁶, legal acts adopted by the Kingdom of Morocco, in its sovereign capacity, in relation to Western Sahara are null and void according to EU law. Consequently, the Kingdom of Morocco cannot express the consent of the people of Western Sahara to be bound by the proposed adaption of the EU-Morocco Association Agreement.

By the same token, no decentralized or regional Moroccan authority, as set up by Morocco according to its domestic law, is qualified to express the consent of the Sahrawi people – a foreign people to Morocco and a third party to the EU-Morocco relations – to an international agreement applicable to Western Sahara – a separate and distinct territory in relation to Morocco that is located outside of its international recognized borders.⁷

Fourthly, by proposing to modify the rules of origin in order to treat products originating in Western Sahara as Moroccan under the Association Agreement, the Commission’s proposal aims at legalizing the plunder and the illegal commercialization of the Sahrawi natural resources. Thereby, the Commission’s proposal undermines the territorial integrity of Western Sahara⁸ and challenges its long-recognized international borders with the Kingdom of Morocco.

Fifthly, given the exclusive ownership rights of the people of Western Sahara over their natural resources⁹ and the prohibition for the Kingdom of Morocco or the Moroccan nationals settled in Western Sahara to exploit these resources¹⁰, the Commission’s proposal contradicts once again the ruling of the Court, the right to self-determination and international humanitarian law. In this respect, during the proceedings, the European Commission rightfully submitted that the *de jure* inclusion of Western Sahara in the EU-Morocco Association Agreement, without the consent of the Sahrawi people, would violate international law, especially the principle of self-determination.¹¹

⁴ Case C-104/16 P, paragraphs 28, 31, 35 and 104.

⁵ Opinion of the Advocate General Wathelet, 13 September 2016, C-104/16 P, EU:C:2016:677 (hereinafter “Opinion C-104/16 P”) paragraph 103.

⁶ Case C-104/16 P, paragraph 92.

⁷ The international boundaries of Western Sahara have been defined by several treaties concluded by France and Spain in 1900, 1904, 1912 and 1956. On 29 August 1997, the Frente POLISARIO and the Kingdom of Morocco concluded the Lisbon Compromise Agreement on Troop Confinement Its paragraph 3 reads as follows: “**This compromise shall in no way change, alter or otherwise affect the internationally recognized boundaries of Western Sahara, and shall not serve as precedent for any argument that such boundaries have changed or been altered.**”

⁸ UNGA Res. 1514, paragraph 4.

⁹ According to UNGA Res. 1803 (XVII), the permanent sovereignty of the people of Western Sahara over their natural resources is a “basic component” of their right to self-determination. The ownership right of the people of Western Sahara is also protected under EU law by Article 17, paragraph 1, of the Charter of Fundamental Rights.

¹⁰ As an occupying power, Morocco must act, concerning natural resources, as an “administrator and usufructuary” (article 55 of the 1907 Hague Regulations). Therefore, it only has the right to continue, at the rate existing prior to the beginning of its occupation, to exploit natural resources of the occupied territory, within the limits of what is required for the army of occupation and the needs of the local population. In any case, it cannot use the natural resources of occupied territory for the general benefit of its home economy, or to grant new concessions over natural resources of the occupied territory. See US Department of State, 1 October 1976, *Memorandum of Law on Israel’s Right to Develop New Oil Fields in Sinai and the Gulf of Suez*, 16 International Legal Materials (1977), pp. 733-753.

¹¹ Case C-104/16 P, paragraphs 79, 82 and 123. See also Opinion C-104/16 P, paragraph 182: “**as the Commission accepts in paragraph 30 of its response, the application of the Association and Liberalisation Agreements to Western Sahara could be interpreted as an infringement of its people’s right to self-determination and**

Therefore, with its latest proposal, the European Commission is not only failing its obligations to implement in good faith the ruling of the Court; it is encouraging the Council to endorse a solution that itself presented as illegal before the EU Court.

As recalled during the proceedings,¹² the EU and its Member States have never recognized the illegal Moroccan policy of annexation and have always supported the right to self-determination of the Sahrawi people.¹³ Therefore, the official negotiations requested by the Commission contradict the long-standing policy of the European Union on Western Sahara.¹⁴

Furthermore, while the Security Council of the United Nations has called the Kingdom of Morocco and the Frente POLISARIO “to resume negotiations under the auspices of the Secretary-General without preconditions and in good faith”¹⁵, the proposal of the Commission, by encouraging Morocco to pursue its illegal occupation and exploitation of Western Sahara and its policy of population transfer and settlement enterprise in that territory, will ultimately undermine the United Nations Secretary-General’s efforts “to re-launch the negotiation efforts with a new dynamic and a new spirit”.¹⁶

Having lived under foreign occupation for 41 years, the people of Western Sahara are well placed to appreciate the primordial value of peaceful relations amongst nations. Therefore, the Frente POLISARIO, as their UN-recognized representative, sincerely hopes for stable relations between the Kingdom of Morocco and the European Union. However, the European Commission and the EU governments must understand that the EU-Moroccan relations can only be prosperous in the long-term if they are based on the rule of law and respect for the sovereign equality between peoples.¹⁷

For all the above-mentioned reasons, the Frente POLISARIO requests your government to reject the European Commission’s proposal to renegotiate the EU-Morocco Association Agreement under the current terms.

In any event, according to its mandate under international law, the Frente POLISARIO is determined to pursue, on behalf of the people of Western Sahara, all legal venues, under EU law and international law, to secure their right to self-determination in all its aspects, including the permanent sovereignty of the Sahrawi people over their natural resources and the territorial integrity of Western Sahara.

Please accept, Excellency, the assurances of my highest consideration.

Brahim Ghali
Secretary-General of the Frente POLISARIO



thus affect the legal situation of that territory, as it gives a degree of legitimacy to the Kingdom of Morocco’s claim to sovereignty.”

¹² Opinion C-104/16 P, paragraph 83.

¹³ Case C-104/16 P, paragraph 123.

¹⁴ Opinion C-104/16 P, paragraphs 84-86, especially paragraph 85: “applicability necessarily and inevitably implies recognition”.

¹⁵ UNSC Res. 2351 (2017), paragraph 8.

¹⁶ UNSG Report on Western Sahara S/2017/307, paragraph 33.

¹⁷ Opinion C-104/16 P, paragraph 70: the relationship between the EU and Morocco “does not mean, however, that the European Union has to accept any view of its partner [...], especially where its partner holds positions which have never been accepted by the international community or the European Union”.