



## **Court of Justice of the European Union : EU-Morocco Agreements do not apply to Western Sahara**

*Preliminary statement ahead of the press conference  
of 22 December 2016, 10:00, European Parliament*

1. On 21 December, the Court of Justice of the European Union handed down a historic judgment for the Saharawi people, by ruling that Morocco and Western Sahara are two distinct territories, of distinct sovereignty, and that the economic exploitation of Western Sahara can only be carried out within the framework of self-determination, i.e. with the consent of the people of Western Sahara.

### **I – The issue of the admissibility of the POLISARIO Front**

2. The POLISARIO Front has never sought the annulment of an agreement concerning Morocco...provided that such an agreement only applied to Morocco! The General Court of the European Union had not annulled the Agriculture Agreement. It had annulled “in so far as it applied to Western Sahara”. In its subsequent judgment, the Court of Justice considered that, because of the most basic international law principles, this agreement could not have applied to Western Sahara, which is a third party/territory. Therefore, the Court considers the action of the POLISARIO Front inadmissible precisely because the agreement cannot apply to Western Sahara, a territory distinct from Morocco.
3. Hence, this inadmissibility does not constitute a defeat for the POLISARIO Front. Quite the contrary, it is a momentous victory, because it stresses that Morocco and Western Sahara are distinct territories.

### **II – What the Court said**

4. An overview of the key excerpts of the judgment of 21 December.

#### **1/ Western Sahara is outside the territorial scope of the EU-Morocco Agreement**

5. The customary principle of self-determination referred to in particular in Article 1 of the Charter of the United Nations is, as stated by the International Court of Justice in its Advisory Opinion

on Western Sahara, “a principle of international law applicable to all non-self-governing territories and to all peoples who have not yet achieved independence”.

6. That principle “forms part of the rules of international law applicable to relations between the European Union and the Kingdom of Morocco”.
7. In accordance with that principle, as specified by United Nations General Assembly Resolution 2625 (XXV), ‘the territory of a colony or other Non-Self-Governing Territory has, under the [UN] Charter, a ... separate and distinct [status]’.
8. In particular, the UN General Assembly, in its various resolutions on Western Sahara, repeatedly expressed its concern in respect of ‘enabling the indigenous population of the Territory to exercise freely its right to self-determination’.
9. The Court concludes,

“In view of the separate and distinct status accorded to the territory of Western Sahara by virtue of the principle of self-determination, in relation to that of any State, including the Kingdom of Morocco, the words ‘territory of the Kingdom of Morocco’ set out in Article 94 of the Association Agreement cannot be interpreted in such a way that Western Sahara is included within the territorial scope of that agreement”.

## **2/ No economic exploitation in Western Sahara without the consent of the people of Western Sahara**

10. Referring to the Advisory Opinion of the International Court of Justice, the Court of Justice stated that «the population of the territory of Western Sahara enjoyed the right to self-determination under general international law», recalling that the General Assembly of the United Nations in its Resolution 34/37 on the question of Western Sahara recommended that the POLISARIO Front, “the representative of the people of Western Sahara should participate fully in any search for a just, lasting and definitive political solution of Western Sahara”.
11. In the light of that information, the Court concluded that “the people of Western Sahara must be regarded as a “third party” within the meaning of the principle of the relative effect of treaties”.
12. As such, that third party may be affected by the implementation of the Association Agreement in the event that the territory of Western Sahara comes within the scope of that agreement, “without it being necessary to determine whether such implementation is likely to harm it or, on the contrary, to benefit it”. It is sufficient to point out that, “in either case, that implementation must receive the consent of such a third party”. The Court then adds, “in the present case, however, the judgment under appeal does not show that the people of Western Sahara have expressed any such consent”.

## **3/ The EU should respect the right to self-determination of the people of Western Sahara**

13. The purported intention of the European Union, reflected in subsequent practice and consisting in considering the Association and Liberalization Agreements to be legally applicable to the territory of Western Sahara, would necessarily have entailed conceding that “the European Union intended to implement those agreements in a manner incompatible with the principles of self-determination and of the relative effect of treaties”.

14. However, the Court continues, “Such implementation would necessarily be incompatible with the principle that Treaty obligations must be performed in good faith, which nevertheless constitutes a binding principle of general international law”.

### **III – The implications of this judgment**

#### **1/ Clear principles**

15. The principles laid down by this judgment, in full continuation of the resolutions of the General Assembly of the United Nations and of the Security Council and the Advisory Opinion of the International Court of Justice of 1975, are very clear:
- Morocco and Western Sahara are distinct territories;
  - The people of Western Sahara must be able to exercise its right to self-determination;
  - Morocco is the military occupying power in Western Sahara;
  - There is currently no European agreement applicable to Western Sahara;
  - There can be no economic exploitation in Western Sahara without the consent of the people of Western Sahara and of its representative, the Front POLISARIO.

#### **2/ The far-reaching consequences of the decision**

16. The Court had pronounced the annulment of the Agreement on Agricultural Cooperation in so far as it was applied to the territory of Western Sahara.
17. The Court’s Judgment goes much further. In fact, the Court considers that the agreements the European Union concluded with Morocco were never validly applied to Western Sahara, but only to the territory of Morocco. Thus, for 16 years now, all the European Union’s dealings in Western Sahara are illegal. This constitutes a violation of law and an assault, which comes with extra-contractual liability.

#### **3/ European companies no longer have a legal framework**

18. The European Agreements do not apply to the territory of Western Sahara. European companies, subjects of European Law, no longer have a legal framework to remain in Western Sahara.
19. They must therefore abandon their settlement or approach the POLISARIO Front in order to reach an agreement, as no activity in Western Sahara is possible without the consent of the POLISARIO Front.

#### **4/ Negotiations with the European Commission**

20. As ruled by the Court, the illegal presence of the European Commission in Western Sahara has necessarily affected the Saharawi people, and this has been the case for 16 years, in all possible sectors. This results in a considerable harm to the Saharawi people, all the more so as this illegal economic exploitation has been used as a weapon to oppose the organization of a self-determination referendum.

21. The POLISARIO Front calls for immediate and unprecedented discussions, and hopes that the conditions will be met in order to turn the page, and to finally act in respect of the rights of the Saharawi people. Otherwise, the POLISARIO Front will act with the utmost determination to impose the full application of the law.

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