

EU-MOROCCO TRADE AGREEMENT ON WESTERN SAHARA:

THE COMMISSION IGNORING THE EU COURT, MISLEADING PARLIAMENT AND MEMBER STATES AND UNDERMINING THE UN

2 July 2018

Preamble

On June 11th, 2018, the EU Commission submitted to the EU Members States and the EU Parliament a proposal to amend the 2000 EU-Morocco Free trade agreement (FTA), as a response to recent rulings of the Court of Justice of the EU (CJEU) in relation to Western Sahara. In parallel, the EU Commission is negotiating an amendment of the 2006 Fisheries partnership agreement (FPA) with Morocco, also in order to comply with the Court rulings. The Commission's proposal intends to extend illegally the territorial scope of the FTA in order to include the territory of Western Sahara under Moroccan occupation. The on-going FPA negotiations seem to be following the same illegal path.

The CJEU has twice (on [21 December 2016](#) and [27 February 2018](#)) ruled that Western Sahara is "separate and distinct" from Morocco and that Morocco has no sovereignty over the territory of Western Sahara. The Court has also stipulated the *consent* of the people of Western Sahara as the principle pre-condition for the application of such agreements in Western Sahara as a non-self-governing territory. Nevertheless, this condition has been totally ignored by the EU Commission.

Furthermore, the negotiation mandate given by the EU Council to the Commission set two main conditions for the modification of the EU-Morocco Agreement: firstly, before the new Agreement is signed, the Commission must have *evaluated its potential impact* on sustainable growth in Western Sahara. Secondly, *the people concerned* by the Agreement must have been *adequately involved*. So far, the Commission did NOT conduct any assessment on the ground nor has it even visited the territories of Western Sahara. In relation to the involvement of the people concerned, the Commission opted for engaging in a very controversial "consultation process" excluding the people, the civil society, including human rights NGOs and the legitimate representative of the people of Western Sahara, the Front POLISARIO. Therefore, we conclude that the EU Commission has failed not only to comply with the CJEU rulings but also to meet both conditions laid out in the mandate given by the EU Council.

The approach of the Commission has no legal basis and aims to mislead the Council and the Parliament. Such a controversial conduct is in full contradiction with international law and EU law; it undermines EU democracy and violates the fundamental principles and commitments of the EU as a leading global actor in the defence of human rights and international legality, as stipulated in its own Treaties.

The Commission has submitted an accompanying report to the amended protocols of the EU-Morocco FTA. A report where the EU Commission claims to have "consulted" Saharawi NGOs representing the Saharawi "stakeholders" while in fact, the Commission held talks merely with representatives of Moroccan institutions, several of which that are illegally present in Western Sahara. The EU Commission has even used our names on the last page of the accompanying report listing us with the "stakeholders" that took part in what they call "a consultation process". In response to this extraordinary manipulation

by the EU executive, we wish to clarify that *we did not take part in these talks and the majority of those mentioned in the Commission's report were never even invited to participate in these talks.*

The CJEU ruling dated 21 December 2016

The European Court of Justice defines Western Sahara as a separate and distinct territory from that of Morocco (Articles 26, 90 and 92 of the judgement). The same Court has concluded that the EU-Morocco Association and liberalization agreements are not applicable to the territory of Western Sahara and such applicability is contrary to the principle of international law and with the principles of self-determination (paragraphs 107 and 123).

The CJEU stated that a treaty must neither impose any obligations nor confer any rights on third states without their consent (CJEU [statement](#) and in paragraph 10 and 100 of the ruling).

In that regard, the application of any EU-Morocco agreement to Western Sahara remain illegal as long as the people of Western Sahara has not consented to it. Consequently, the consent of the people of Western Sahara can be obtained only through its UN recognized and sole legitimate representative the POLISARIO Front (paragraph 105 of the Court ruling and all relevant UNSC resolutions) as long as the people of Western Sahara is not able to exercise their right to self-determination.

In the report accompanying the proposal of amendment of the EU-Morocco Agreement, the EU Commission claims to have been interacting with Mr. Horst Köhler, the personal envoy of the United Nations' Secretary General to Western Sahara on this matter. However, the report and the proposed amendments presented by the EU Commission do not reflect in any aspect the positions of Mr. Köhler and of the UN. We see this as an unethical misuse of a reference to Mr Köhler and a direct challenge to his authority and his efforts.

Consent of the people vs. consultation of the population

Considering the legal status of Western Sahara as a non-self-governing territory awaiting decolonization process led by the United Nations, it is very disappointing to see the EU Commission's premeditative attempts to replace the consent of the people of Western Sahara - as principle condition set by the CJEU for the applicability of any agreement to Western Sahara - by a consultation process with fabricated "stakeholders".

Adding insult to injury, the EU Commission undermines our people, the people of Western Sahara when they continuously replace us by the so-called local population. The difference between the two terminologies does not need detailed exposition especially to the Europeans who have had extensive experience in occupation by foreign forces in their past.

Furthermore, the accompanying report provided by the EU Commission says that it is impossible to define Saharawis from non Saharawis, but when it comes to defend their circumvention scheme, the Commission dares to claim that it consulted ethnic Saharawi groups during the "consultation process".

In those circumstances, it should be recalled that the CJEU does not recognize the sovereignty of Morocco over Western Sahara, nor does the EU recognize that – as explicitly mentioned in both the accompanying report and the proposed amendments. Yet, the EU Commission insists on negotiating with Morocco when it comes to the exploitation of the natural resources in the territory of Western Sahara. Moreover, it ignores over 20% (check) of the territory of Western Sahara that is under the control of the POLISARIO Front and the population living in that part of the territory, as well as the Saharawi refugees living in the camps in neighbouring Algeria.

In addition to that, the EU Commission in its proposal and the accompanying report keep using the term “de facto administration” when referring to the Moroccan presence in Western Sahara, a terminology that does not exist in the international law as explicitly mentioned by the CJEU (Opinion of the Advocate General Mr. Wathelet, paragraph 223).

It is telling that the so-called consultations were launched by the EU Commission AFTER concluding a deal with Morocco in Rabat. This underscores the merely symbolic nature of such consultations. We don't have any confirmation for the part of the consultations that reportedly took place in Brussels. The “stakeholders” that participated are proper Moroccan entities or allies that directly benefit from the illegal occupation of Western Sahara. Two Saharawi organizations were invited to Rabat and subsequently to Brussels. However, both decided to join the Saharawi civil society unified position to NOT participate in such unclear and controversial talks. (see Appendix 1 : open letter dated 3rd February 2018, Appendix 2: statement by El-Ghad for Human Rights dated 3rd March, 2018 and Appendix 3: the statement of the Saharawi civil society during a large protest on front of the EU Council and Commission buildings in Brussels dated 7th June 2018). Moreover, we wish to underline the severe level of repression in occupied Western Sahara and in Morocco against any individual or organization active in support of the self-determination of Western Sahara or of the respect for human rights in that territory. This grave situation has been blatantly ignored by the Commission in its proceedings.

The EU Commission goes further in its report to implicitly approve the transformation of the demographic identity of the territory through the mass import of Moroccan settlers, a crime under international law and that the EU vocally opposes in other places such as Palestine.

We do support deals between the EU and Morocco and the Moroccan people have the right to benefit from such deals. However, we do oppose any inclusion of Western Sahara in agreements with Morocco without obtaining the prior consent of the people of Western Sahara.

[A fake impact assessment and lack of statistics](#)

To respect the mandate given by the EU Council, the Commission should have conducted a comprehensive assessment of the impact of the proposed amendment and the extension of the FTA to cover Western Sahara. So far, the EU Commission has not visited the occupied territories nor the liberated territories of Western Sahara, and limited itself to the data provided by the Kingdom of Morocco.

From its proposal and its accompanying report, it is clear that the EU Commission has no statistics nor data available on the past trade in goods originating in Western Sahara under the liberalisation agreement with Morocco. The Commission acknowledges in its report that it is impossible to distinguish

Moroccan goods from those of Western Sahara origin. However, in the same report, it claims to have immediately implemented the CJEU ruling and lifted the tariff preference for the Saharawi products.

The EU Commission repeatedly declared that the amendment of the free trade agreement to include Western Sahara in its territorial scope is a purely trade operation and should not be subject to political evaluation. The reality is exactly the opposite as the EU has, to our understanding, never concluded any trade agreement with a third country in the absence of reliable and extensive statistics and without having accurate estimations and values of the exchanged goods.

In the accompanying report (page 9, paragraph 5) the EU Commission states that “ *the EU has no competence for or direct means of investigating the territory of Western Sahara* “. On the other hand, it claims to have competence and the means to include the territory of Western Sahara in their deals with the occupying power against the consent of the people of Western Sahara.

The Human Rights situation

The EU Commission describes the human rights situation in Western Sahara as being “similar” to that in Morocco. It is clear that the Commission has NO access to the territory of Western Sahara where you can clearly observe the severe presence of the Moroccan forces in any city of Western Sahara. It seems evident that the EU Commission has absolutely no information at its disposal on Western Sahara, does not follow the human rights situation in Western Sahara or depends on misleading sources.

The EU Commission acknowledges at least the violations of freedom of expression, freedom of demonstration and freedom of association committed by the Moroccan regime against Saharawis. The Commission even confirms that Saharawi NGOs face restrictions in operating and have no legal recognition or registration. However, the EU Commissions insists on limiting the consultations conducted to only registered NGOs. Such a practice underscores the clear intention of the Commission to exclude the Saharawis from these consultations.

On the other hand, the EU Commission indicates that it has a “dialogue” on human rights with Morocco which was put on hold after the CJEU ruling of December 2015. And to resume such dialogue, they need to have the proposed illegal amendment to the FTA in place. As civil society and human rights activists in Western Sahara, we haven’t seen any results from such dialogue before its suspension.

According to the EU Commission, the EU must go against its own Court and its proper law to have just a dialogue on Human Rights while the EU seems to have many of similar dialogues with other countries that is proofed to be ineffective.

The EU Commission knows very well the blockade in the occupied territories of Western Sahara and that no one has access to the territory. They have been regularly informed about hundreds of human rights violations, the situation of the Saharawi political prisoners and the daily collective and individual harassments in addition to hundreds of international observers who were denied access to the territory by the Moroccan authorities including those representing the EU Parliament. Yet, the EU Commission remains silent on these matters.

Relying on the Moroccan Council for Human Rights (Conseil National des droits de l’homme – CNDH) to report on the human rights situation in Western Sahara is a conspiracy against the people of Western Sahara. The CNDH was created by Morocco and may defend the rights of Moroccans to a certain allowed

extent, but when it comes to Western Sahara and the right to self-determination they hold the official position of the Moroccan regime. Instead, Saharawi human rights NGOs are the only capable and credible sources of information.

Our conclusion is that when the EU Commission does not even mention the right to self-determination - the fundamental collective right - in its human rights assessment, we question the value of the report as a whole.

The benefits claims

Although it is an irrelevant factor in the absence of the consent of the people of Western Sahara according to the CJEU (paragraph 106 of the ruling), the EU Commission repeatedly used the issue of the potential benefits as an argument to obtain the support of the EU Council and EU Parliament for the proposed extension of the EU-Morocco agreement. Nevertheless, the EU Commission focus on benefitting the local population, which does not in any way represent the people of Western Sahara.

The EU Commission could not provide any statistics to uphold their claims of benefits. The report even made three essential acknowledgements denying the very same claimed benefits. First, that it is impossible to distinguish products originating in Western Sahara from those originating in Morocco (1st paragraph, page 9 of the accompanying report). Second, the EU Commission states it has no direct means of investigating the territory of Western Sahara in addition to their full dependence on the data provided by Morocco (4th Paragraph, page 9 of the accompanying report). Third, that it is impossible to define Saharawis from non-Saharawis when it comes to the employment benefits (1st paragraph, page 25 of the accompanying report).

The EU Commission failed even in providing the list and ownership details of companies exporting products to the EU from Western Sahara - the evident reason being that all companies located in the Saharawi occupied territories that are due to benefit from the trade agreement are owned by Moroccans, notably the King himself, and foreigners, not Saharawis. And when it comes to employment benefit, there is no information on who are those employees (share of Saharawi employees compared to Moroccan settlers). Yet, the EU Commission claims that the agreement is benefitting the people as a whole "at least indirectly" (last paragraph, page 18 of the accompanying report). We don't see how the agreement is benefitting Saharawis living in the occupied territories of Western Sahara, and how it will benefit the people of Western Sahara living in the refugee camps and neighbouring countries who are totally excluded in all aspects of this matter, from the consultations, negotiations and future implementation of the agreement.

Environmental impact assessment

"The exact volume and characteristics of the groundwater are still unknown" the EU Commission report states, (2nd paragraph, page 18 of the accompanying report). The report refers to Morocco's reports on the use of groundwater reserves in Western Sahara.

The agricultural productions in Western Sahara depends for 100% on the non-renewable groundwater reserves, in the meanwhile the EU Commission report claims that "it has very minimum to no impact". In contrary, we do know how huge are the water quantities needed to grow tomatoes and melons in the south of Western Sahara where those plantations are located.

In Western Sahara, a credible and independent Environmental Impact Assessment was never conducted for the agriculture industry and for the fish-processing industry nor for the fisheries activities. This is evidently deeply problematic, since the model of export oriented, resource intensive agricultural production will significantly draw on the already limited natural resources, notably water, and hence gravely prejudice to the environmental sustainability of the territory and violate the inalienable right of the Saharawi people over their national resources.

Summary and conclusions

An illegal EU Commission proposal

The Commission's proposed amendment to the EU-Morocco agreement is illegal as it does not meet both the requirements under the CJEU rulings nor the EU Council's mandate. There are no efforts from the EU Commission to obtain the consent of the people of Western Sahara nor have we seen responsible engagement from the EU in negotiations with the legitimate and UN recognized representative of the people of Western Sahara, the POLISARIO Front.

Fuelling the conflict, demographic engineering and the occupation of Western Sahara

The EU Commission refers to the extension of the EU-Morocco free trade agreement to cover Western Sahara. In fact, Western Sahara is not entirely controlled by Morocco. There is a liberated zone which represents approximately the third of Western Sahara where the POLISARIO Front has full and exclusive control and exercise the sovereign rights on behalf of the people of Western Sahara. How is this agreement going to include the liberated zone of Western Sahara without having an agreement with the POLISARIO Front remains unspecified.

Replacing the people by the population and dividing the territory of Western Sahara is a non-acceptable approach and that directly contributes to the attempts by the occupying forces to divide the Saharawi people and to the ongoing process of demographic engineering of and population transfer into the territory.. It violates two components of our right to self-determination, namely our right to national unity as a people and the territorial integrity of Western Sahara.

A grave Human Rights situation

As there are no results from the dialogue with Morocco on Human Rights, the EU should consider its own mechanisms and support the UN mechanisms to protect the Human Rights in Western Sahara as well as support the inclusion of a human rights mandate to the MINURSO (rather than actively oppose it as several EU Member States are doing). There are more than 60 Saharawi political prisoners in Moroccan jails from which dozens are Human Rights defenders, Saharawi students and Saharawi journalists that need to be immediately released. We don't see any efforts from the EU Commission toward those political prisoners nor toward the improvement of the Human Rights situation in the occupied territories of Western Sahara, as warranted by the EU Guidelines on Human Rights Defenders. The Commission doesn't provide any form of assistance to Sahrawi civil society or human rights defenders, in contrast with its human rights policy around the world, except in that territory. Hence, the Commission should make financial assistance available (notably under the EIDHR) to such organisations.

No benefits for the people, only for the occupier

The EU Commission failed to demonstrate the benefit of the people of Western Sahara from the EU-Morocco agreements not because they fail to document it, but mainly because there are no benefits to be proven. More important, they should bear in mind that the people of Western Sahara is divided during the war by the longest berm/wall in the world and millions of anti-personal land-mines. There is a large part of the Saharawi people living in exile, those are clearly not benefiting from the proposed agreements.

If the EU intends to benefit the people and the territory of Western Sahara, the EU should deal with Western Sahara and the people of Western Sahara as a whole.

However, the reality on the ground denies the claimed development in the territory of Western Sahara. No single university has been built in Western Sahara, no single proper hospital and the infrastructure remains at its poorest.

The politics of trade

The EU Commission claims to have a strictly economic evaluation for the proposed trade agreement and that political issues are not considered at all. Well, in absence of data and statistics, it is crystal clear that the main drive to illegally extend the EU-Morocco agreements to cover the occupied Western Sahara is politics. The same politics that intend to legitimate occupation, identity transformation and devote the self-invented de-facto administration terminology.

The plunder of natural resources in Western Sahara contribute directly to the prolongation of the occupation, the suffering of the people of Western Sahara and strengthen the military presence of Morocco in the territory.

Hamper the UN peace process

The UN has been trying to find a peaceful solution for the question of Western Sahara for 27 years. Yet, a mutually agreed solution has still to be achieved.

Morocco refuses the UN calls to resume direct negotiations with the POLISARIO Front for a decade.

The EU has finally got a role in the on-going peace process through the former German Head of State, Mr. Horst Köhler who was appointed as Personal envoy of the UN Secretary General to Western Sahara. Accordingly, the EU got the opportunity to be part of the solution after decades of absence. In the meantime, the EU is directly undermining the efforts of Mr. Horst Köhler by its support to the Moroccan plunder of Western Sahara's natural resources, by providing the Moroccan regime with financial means to sustain and by implicit political support. If this will continue, what would make Morocco to go back to the negotiation table?

Our position

We encourage the EU member states and the EU Parliament to engage with Morocco for the sake of the people of Morocco, as long as it does not include Western Sahara and does not involve the plunder of the natural resources of the people of Western Sahara.

Any economic activities and any exploration and exploitation of the natural resources in Western Sahara should be in full respect of international law, EU law and the consent of the people of Western Sahara.

We reject the revision of the agreement as proposed by the EU Commission for the above explained reasons. The EU Commission has to revise its proposal in order to be in line with the CJEU rulings and to meet the requirements of the EU Council mandate.

We condemn the misuse of our NGOs names in the report prepared by the EU Commission accompanying the amended protocols of the EU-Morocco free trade agreement, and we demand the EU Commission to reflect explicitly our position and the position of Mr. Host Köhler in their reports to the Council and the European Parliament in full transparency.

We call upon the EU member states and the EU Parliament to reject any proposed agreement covering Western Sahara that does not have the explicit consent of the POLISARIO Front, as the legitimate representative – and recognized by the UN as such - of the people of Western Sahara.

We call upon the EU member states and EU Parliament to support the UN peace process and Mr. Köhler's efforts to resume negotiations between the POLISARIO Front and the Kingdom of Morocco and to contribute constructively to formally decolonize Western Sahara.

We value the position taken by the members of the INTA Committee of the European Parliament to evaluate and assess the legality the EU Commission proposal and to conduct a transparent and independent fact finding mission to the territory of Western Sahara. On this matter, we call upon the European Parliament to make sure that its fact finding mission will be to both sides of the berm (occupied and liberated zones), balanced by representing all political groups, have their meetings in the MINURSO premises and to have full freedom of movement to be able to see the real situation on the ground. We also insist that this mission meets with genuine Saharawi civil society representatives and travels to the refugee camps in Algeria.

Adopted and signed by:

Occupied territory of Western Sahara:

1. The collective of Saharawi Human Rights Defenders (CODESA)
2. Association for Monitoring of Resources and for Protection of the Environment in Western Sahara (AMRPENWS)
3. Saharawi Committee for the Defense of the Self-Determination of the People of Western Sahara (CODAPSO)
4. The Saharawi Association for Victims of Grave Violations Committed by the Moroccan State (ASVDH)
5. The Saharawi Association for the Protection and Dissemination of the Saharawi Culture and Heritage
6. Saharawi Media Team
7. National Television Team
8. The Saharawi Center for Media and Communication
9. The Association for the Protection of Saharawi Prisoners in Moroccan Prisons
10. Western Sahara Times

11. Bentili Media Center
12. Committee for Support the Peace Plan and Protection of Natural Resources in Western Sahara
13. Committee of the Mothers of the 15 Abductees
14. Association for Justice and Human Rights
15. The Saharawi Center for Save Memory
16. The Saharawi Observatory for the Child and Women
17. Forum for the Future of Women
18. Renunciation Moroccan Nationality Group
19. The field coordination of the unemployed Saharawi graduates
20. Bentili Media Center
21. Gdim Izic Coordinating for Peaceful Movement
22. Committee of Victims of the Agdaz and Magouna
23. Independent Media Commission
24. The Saharawi Association for Persons with Disabilities in Western Sahara
25. Committee of the Families of the Saharawiss Missing
26. The Saharawis Association for the Defense of Human Rights and the Protection of Resources in Bujdour
27. Freedom Sun Organization in Smara
28. Saharawis Committee for the Defense of Human Rights in Samara
29. Organization Against Torture in Dakhla, western Sahara
30. The Saharawi committee for the defence of human rights in Zag
31. The Saharawi committee for human rights monitoring in Assa
32. The Saharawi committee for the defence of human rights in Glaimim
33. The Saharawi organization for the defence of freedoms and dignity
34. El Ghad for human rights

Saharawi refugee camps:

35. Comisión Nacional Saharaui de Derechos Humanos (CONASADH)
36. Unión Nacional de Mujeres Saharaui (UNMS)
37. Unión Nacional de Trabajadores de Saguia El Hamra y Rio de Oro (UGTSARIO)
38. Unión Nacional de la Juventud de Saguia El Hamra y Rio de Oro (UJSARIO)
39. Unión Nacional de Estudiantes de Saguia El Hamra y Rio de Oro (UESARIO)
40. Unión de Juristas Saharaui (UJS)
41. Unión de Periodistas y Escritores Saharaui (UPES)
42. Observatorio Saharaui de Recursos Naturales
43. Asociación de Familiares de Presos y Desaparecidos Saharaui (AFAPREDESA)
44. Grupo Non-Violence Active (NOVA SAHARA OCCIDENTAL)

45. Asociación de Víctimas de Minas (ASAVIM)
46. Asociación de Abogados Saharauis (UAS)
47. Campaña Saharaui para la sensibilización sobre el peligro de Minas (SCBL)
48. The Saharawi campaign against the plunder SCAP

Saharawi Diaspora :

49. Saharawi association in the USA (SAUSA)
50. VZW de vereniging van de Saharawi gemeenschap in Belgie – Belgium
51. Association culture Sahara – centre de France
52. Association des femmes Saharawi en France
53. La league des jeunes et des etudiants Saharawi en France
54. Association de la communauté Saharaoui en France
55. Association culturelle franco-Saharaouie
56. Association des Sahraouis en France
57. Association des Sahraouis de Bordeaux
58. L'union des ingénieurs Sahraoui
59. Asociación de abogados saharauis en España
60. Asociación de médicos saharauis en España
61. La liga de deportistas saharauis en España
62. La liga de periodistas saharauis en España
63. Comunidad Saharaui en las palmas
64. Asociación de saharauis en Tenerife
65. Asociación de saharauis en Fuerteventura
66. Colectivo saharai en Lanzarote
67. Asociación de saharauis en bal
68. Asociación ARDI HURRA en Sevilla
69. Asociación de saharauis en lebrija
70. Colectivo de saharauis en Jaén
71. Asociación de saharauis en jerez de la frontera
72. Colectivo sah en estepona
73. Comunidad Saharaui en Granada
74. Asociación amal centro Andalucía
75. Comunidad Saharaui en Murcia
76. Asociación de saharauis en alicante
77. Asociación de zamur Valencia
78. Comunidad Saharaui en Catalunya
79. Comunidad Saharaui en Aragón
80. Asociación de saharauis en valdepeñas

81. Comunidad Saharaui en Castilla la Mancha
82. Asociación de saharauis en Ávila
83. Comunidad Saharaui en Castilla y León
84. Asociación de saharauis en Navarra
85. DISABI Bizkaia
86. Sahara Euskadi Vitoria
87. Sahara Gasteiz Vitoria
88. Amal nanclares
89. Tawasol Iludio
90. Tayuch Amurio
91. Colectivo saharai en GIPUZKOA
92. La liga de estudiantes en España
93. Green Western Sahara Association

Please find hereunder the Appendixes to this document.

Appendix 1

SAHARAWI CIVIL SOCIETY CONDEMN EU EFFORTS TO UNDERMINE RIGHTS OF SAHARAWI PEOPLE

[03 FEBRUARY 2018]

As representatives of Saharawi civil society, we express serious misgivings over ongoing efforts by the European Commission to circumvent the 21 December 2016 ruling of the European Court of Justice (ECJ), which undermine the legal rights of the Saharawi people, and continue the illegal exploitation of the resources of Western Sahara.

As underlined by the Advocate-General of the ECJ on 10 January 2018, the territory of Western Sahara remains under the partial occupation of Morocco. The ECJ, in December 2016, definitively ruled that Morocco has no sovereignty over Western Sahara – reaffirming the position of the International Court of Justice, the United Nations and the African Union, that Western Sahara is a Non-Self-Governing Territory with continuing and exclusive ownership of the natural resources of the Territory. In parallel, the ECJ ruling reaffirmed that any agreement pertaining to Western Sahara's natural resources requires the consent of the representatives of the Saharawi people, General Assembly Resolution 34/37 establishes those representatives as Frente POLISARIO.

We therefore express our deep concern at the ongoing negotiations between Morocco and the European Commission to include Western Sahara in trade agreements with Morocco without the consent of the Saharawi people through its legitimate representative, the Frente POLISARIO. To this date, no serious scrutiny of this process has been allowed, the mandate for these negotiations has not been published, and the Commission has not made any genuine attempts to engage with POLISARIO as the legitimate representative of the Saharawi people.

We understand that the EU Commission now seeks to undertake a consultation process after concluding a negotiated deal with Morocco, however neither the terms of participation nor the list of groups to be consulted have not been published. Thus far this process is not being conducted in a transparent or credible manner; nor has there been any public announcement of this process. Many groups have received a request from the EU Commission to attend a consultation meeting in the capital city of Morocco. It is deeply concerning that the EU would host a consultation with Saharawis in the land of its illegal occupier; with no guarantee that Morocco will not and cannot exert undue influence on participating parties; including through intimidation, and threat of violence or retaliation. We have yet to see any consultation which takes into account Saharawis living in the non-occupied parts of the territory or the refugee camps.

We also observe with frustration that the Commission replaces the deliberate terminology of 'Saharawi people', with 'population'. These concepts are fundamentally different. Consulting Moroccan organizations, parliamentarians and businesses about Western Sahara can never replace the consent of the Saharawi people.

To be clear, our engagement in any such consultation is contingent upon it being conducted in a legitimate, open, and credible manner, including guarantees of the safety of participants to speak freely, in addition to a clear indication that the EU is prepared to act in good-faith with a view to finding a legal, just solution to the illegal occupation of Western Sahara.

Under the current conditions, we will not participate in a consultation process hosted by EU Commission which relies on Morocco, and parties sympathetic to Morocco, whose illegal occupation of Western Sahara the EU itself does not recognise, to demonstrate the consent of the Saharawi people whose land it occupies. This is a deeply destructive and unsustainable approach which directly contravenes EU and international law, strengthens and funds Morocco's illegal occupation, and threatens to undermine the UN Political Process and the efforts of the United Nations special envoy to Western Sahara.

The Saharawi people, do not benefit, economically or otherwise, from the illegal exploitation of their natural resources and trade with the European Union; nor has the Saharawi people's consent been credibly sought. Any economic gains and development as a result of the exploitation of our natural resources and their illegal trade with the EU, are selectively distributed with the sole intent of further entrenching Morocco's illegal occupation and systematically discriminating further against the Saharawi people it occupies. We reiterate our steadfast determination to seek reparations for this illegal exploitation of our natural resources, over which we have continuing sovereignty, from all who have benefited and continue to be benefit from this exploitation.

We therefore **call on the European Commission to immediately reverse the inclusion of the territory of Western Sahara** from the talks with Morocco, and further to:

1. **Engage constructively with the Frente POLISARIO** at the appropriate level of standing as the **legitimate representative of the Saharawi people**, and party to the UN peace talks.
2. **Comply with the CJEU Ruling by immediately clarifying the legal & territorial** scope of ongoing trade amendment negotiations with Morocco;
3. Make public the **process by which the consent of the Saharawi people has been or will be sought** as required under EU law, including publishing the list of all parties who will be consulted, the terms of consultation, & the mechanism for fair participation
4. Undertake an **unhindered and comprehensive fact-finding mission** to the territory of Western Sahara to assess the **humanitarian, human rights, and economic** situation on the ground
5. Conduct an **urgent audit of EU Member States' compliance** with the CJEU ruling of 21st December 2016

Appendix 2



جمعية الغد لحقوق الإنسان
Association el Ghad pour les Droits de l'Homme
Tomorrow Association of Human Rights

Press Release

3rd March 2018

On January 30th, 2018, we received an invitation from the European Commission to participate in a meeting to “exchange views” in relation to the free trade agreement concerning agricultural and fisheries products which to be amended after the CJEU ruling on 21 December 2016 based on EU council’s mandate. We were initially informed that the meeting was to take place on February 2nd, 2018 at the EU representation in Rabat.

On January 31st, 2018 we were surprised by the EU Commission initialing the protocol of the free trade agreement which we were invited to “discuss” with the EU Commission. On February 1st, 2018 we were informed by the EU Commission that our meeting is postponed and new dates will be proposed.

On February 2nd, 2018 we raised our concerns in an email to the EU Commission signing an agreed deal with Morocco prior to the planned consultations and no clarifications were received from the EU commission on the matter. A second invitation followed on February 15th, 2018 where the Commission requested to change location of the meeting from Rabat to Brussels and highlighting their engagement in open dialogue with the legitimate representative of the Saharawi people, the POLISARIO Front through its EU representation in Brussels.

Thus far, this process is not being conducted in a transparent way and we express our deep concern as to why the European Commission has begun a consultation process with groups in Western Sahara without first having achieved the consent of the representative of the people of the territory.

While we wish to express our deep frustration that we were asked for an opinion to a consultation process that should never have been initiated, we also want to underline our frustration that the selection of the organizations are not made by the representatives of the territory, but by the Commission and Rabat.

As we have seen, the invited parties to participate in the consultations announced by the European Commission are all pre-selected Moroccan organizations and officials who represent

only the interest of the Moroccan authorities and businesses in the occupied territory of Western Sahara. And those can never represent the consent of the Saharawi people.

We have also observed with concern that the Commission replaces the deliberate terminology of 'Saharawi people', with 'population'. These concepts are fundamentally different. This is a deeply destructive and unsustainable approach which directly contravenes EU and international law, strengthens and funds Morocco's illegal occupation, and threatens to undermine the UN Political Process and the efforts of the United Nations special envoy to Western Sahara.

We are also frustrated to see that the Commission in its invitation to us give impression that POLISARIO has given acceptance to the process.

Our association does not wish to take part in "consultation process" initiated by the European Commission which clearly intent to circumvent the CJEU rulings in violation of the European and international law. We announce:

- 1- That the ownership of the natural resources of Western Sahara is to the "Saharawi people" and not "the population of Western Sahara". Any exploration or exploitation activities of the natural resources of Western Sahara, and any trade agreement covering Western Sahara, need to have the consent of the Saharawi people through its legitimate representative, the POLISARIO Front.
- 2- That any consultation process with civil society from Western Sahara only makes sense if it includes half our people who have fled, and only after a consent has been obtained.
- 3- That none of the institutions named by the Commission in the European Parliament on 20th February 2018 to take part in the 'consultation process' represent the people of Western Sahara.
- 4- Our rejection of all activities that are in contradiction with the European and international law and the right of the Saharawi people to self-determination
- 5- A call to the EU Commission to immediately stop any further 'consultation' of 'stakeholders' from the territory of Western Sahara until a permission to proceed with the EU-Moroccan negotiations have been obtained from the representative body of Western Sahara, POLISARIO.

Appendix 3

STATEMENT

Brussels, June 7th, 2018

In its rulings of 21 December 2016 and 27 February 2018, the Court of justice of the EU was clear in defining the status of Western Sahara as a distinct territory, subject to a UN led decolonization process, denying Morocco's sovereignty claims and emphasizing the inapplicability of EU-Morocco agreements to Western Sahara. Furthermore, the CJEU set the consent of the people of Western Sahara as the essential pre-condition for the legitimacy of any agreement to be applied to Western Sahara and the Court referred to the international humanitarian law as the framework for such an application.

The EU Commission ignored the key principles of the judgment. Instead of seeking the consent of the people of Western Sahara, the Commission engaged in "consultations with stakeholders" while a deal with Morocco had already been initiated.

The EU Commission's representatives used fallacious terms in public hearings in the European Parliament replacing the notion of consent by that of "consultation process" and replacing "the people of Western Sahara" by the "local population" which are fundamentally different concepts. The Commission even went as far as to adopt in public meetings the Moroccan illegal terminology of "southern provinces" when referring to Western Sahara.

It is not the Saharawi civil society, and for sure not the Moroccan occupier who have the right to consent or approve any agreement that involves the exploitation of Western Sahara's natural resources and its adjacent waters. We are not boycotting the EU. Instead, we prefer to have an open dialogue with clear determination of responsibilities to avoid the possible misinterpretations and distortions. In the meantime, the Saharawi civil society is open to engage in any activities related to the implementation of EU agreements in Western Sahara after obtaining the consent of the people of Western Sahara through its UN recognized representative, the POLISARIO Front.

The current approach of the Commission is prolonging the occupation and the suffering of the Saharawi people. Even worse: while the EU concludes agreements relating to our country with the occupier, it lowers the much needed humanitarian aid to the Saharawi refugees and turns a blind eye to the dire human rights situation inside our homeland, exemplified by the high number of Saharawi political prisoners and daily abuses of the most basic human rights.

We often hear from the EU that we will benefit from the EU-Morocco deals that affect our land. We have so far not seen a shred of evidence to back that up. In 2010, thousands of Saharawis

left their homes in the occupied territory, and set up a large protest camp in a place in the desert called Gdeim Izik, to decry their socio-economic exclusion in their own land. Unemployed Saharawis protest every single day in the streets of El Aaiun and other cities. In over 40 years of occupation, not a single university has been built in Western Sahara. Education is thus practically impossible for Saharawis: we have no opportunity in our own land, and studying thousands of kilometers away in Morocco is too expensive for many. Those few of us who can make it there, are prosecuted for their Saharawi origin. Just recently, this state-induced violence and racism has resulted in the horrific murder of the Saharawi student Abderraheem Badri in Agadir, and in that of many others before him.

We are concerned and aggravated by the way the EU External Action Service and the EU Commission distort and manipulate our rights, and our voice. So let's be clear, here today. The Saharawi civil society opposes any agreement with Morocco that includes Western Sahara, this is our position. And we demand the EU Commission to reflect explicitly our position in their report to the Council and the European Parliament in full transparency. We reject the approach of the EU Commission to negotiate deals covering our land with the occupier, and we will oppose any outcome of that approach, as the entire premise was in violation of our rights.

Our conclusion is that there are serious attempts to drag the EU Council and the European Parliament toward a major violation of international law, EU law and the fundamental values of the EU in the name of rapacity and economic interests. Therefore, we - the Saharawi civil society – are gathered today to condemn the EU Commission's intention to continue its illegal practices in Western Sahara and call upon the European Council and the European Parliament to:

1. take their responsibilities to guarantee full abidance to the ruling of the European Court of Justice
2. reject any proposed agreement covering Western Sahara that does not have the explicit consent of the Frente Polisario, as the legitimate representative – and recognized by the UN as such - of the people of Western Sahara
3. assume its responsibility as a major partner of Morocco to encourage Morocco to engage genuinely and without preconditions in the UN led peace efforts
4. To ensure that EU-relations with Morocco, important as they are, do not undermine the UNSG Personal Envoy, Mr Horst Köhler, in his efforts to broker a just and lasting peace in Western Sahara, in line with the principle of self-determination.
5. To call on Spain, as an EU Member State, to formally decolonize Western Sahara, as it is still the de jure administering power of Western Sahara, as confirmed by the High Court of Spain.
6. Undertake an unhindered and comprehensive fact-finding mission to the territory of Western Sahara to assess the humanitarian, human rights and socio-economic situation on the ground and to drastically enhance its assistance to the Saharawi people.



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 146/16

Luxembourg, 21 December 2016

Appendix 4

Judgment in Case C-104/16 P

Council v Front populaire pour la libération de la sagaia-el-hamra et du rio de oro (Front Polisario)

The Association and Liberalisation Agreements concluded between the EU and Morocco are not applicable to Western Sahara

The Court therefore sets aside the judgment of the General Court which had found the opposite to be the case and dismisses the action for annulment brought by the Front Polisario against the Council's decision to conclude the Liberalisation Agreement

Western Sahara is a territory in North-West Africa, bordered by Morocco to the north, Algeria to the north-east, Mauritania to the east and south and the Atlantic to the west. Currently, the largest part of Western Sahara is controlled by Morocco. A smaller part of that territory, in the east, is controlled by the Front Polisario, a movement which seeks independence for Western Sahara and whose legitimacy has been recognized by the United Nations.

In 2012, the EU and Morocco concluded an agreement providing for reciprocal liberalisation measures on agricultural products, processed agricultural products and fish and fishery products (the 'Liberalisation Agreement'). That agreement, the territorial scope of which depends on that of the EU-Morocco Association Agreement¹, was formally concluded by the EU on the basis of a Council decision².

The Front Polisario brought an action before the General Court seeking the annulment of that decision. By its judgment, delivered on 10 December 2015³, the General Court annulled the decision, having held, first of all, that the Association and Liberalisation Agreements were applicable 'to the territory of the Kingdom of Morocco' and that that expression was to be understood, in the absence of a stipulation to the contrary, as encompassing Western Sahara. The General Court then held that, in view of the application of those agreements to Western Sahara, Front Polisario was concerned by the Council's decision and therefore had standing to request the annulment of the decision. Finally, the General Court held that the Council had failed to fulfill its obligation to examine, before the conclusion of the Liberalisation Agreement, whether there was any evidence of the exploitation of the natural resources of the territory of Western Sahara under Moroccan control likely to be to the detriment of its inhabitants and to infringe their fundamental rights. Dissatisfied with that judgment, the Council brought an action before the Court of Justice seeking its annulment.

In today's judgment, **the Court, giving judgment following an expedited procedure at the request of the Council**, upholds the appeal and **sets aside the judgment of the General Court**.

¹ Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, on the one hand, and the Kingdom of Morocco, on the other hand, signed in Brussels on 26 February 1996 and approved on behalf the Communities by Decision 2000/204 of the Council and the Commission of 24 January 2000 (OJ 2000 L 70, p. 1).

² Council Decision 2012/497/EU of 8 March 2012 on the conclusion of an Agreement in the form of an Exchange of Letters between the European Union and the Kingdom of Morocco concerning reciprocal liberalisation measures on agricultural products, processed agricultural products, fish and fishery products, the replacement of Protocols 1, 2 and 3 and their Annexes and amendments to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, on the one hand, and the Kingdom of Morocco, on the other hand (OJ 2012 L 241, p. 2).

³ [T-512/12](#) Front Polisario v Council.

The Court observes that, in determining the territorial scope of the Liberalisation Agreement, whose terms do not at any point refer to Western Sahara, the General Court failed to take account of all the rules of international law applicable to relations between the EU and Morocco, as required by the 1969 Vienna Convention on the Law of Treaties⁴.

In that regard, it notes first of all that, **in view of the separate and distinct status guaranteed to the territory of Western Sahara under the Charter of the United Nations** and the principle of self-determination of peoples, **it cannot be held that the term ‘territory of the Kingdom of Morocco’, which defines the territorial scope of the Association and Liberalisation Agreements, encompasses Western Sahara and, therefore, that those agreements are applicable to that territory.** The General Court thus failed to draw the consequences of the status of Western Sahara under international law.

Secondly, it is clear from international practice that, **where a treaty is intended to apply not only to the sovereign territory of a State but also beyond it, that treaty must provide therefor expressly**, whether it is a territory under the jurisdiction of that State or in any territory for whose international relations the State in question is responsible. That rule therefore also precludes the application of the Association and Liberalisation Agreements to Western Sahara.

Finally, after recalling **the principle of the relative effect of treaties under which a treaty must neither impose any obligations or confer any rights on third States without their consent**, the Court states that, in view of the Advisory Opinion on Western Sahara handed down in 1975 by the International Court of Justice at the request of the United Nations General Assembly⁵, **the people of that territory must be regarded as a third party** which may be affected by the implementation of the Liberalisation Agreement. In the present case, **it is not apparent that that people consented to the agreement being applied to Western Sahara.**

As to the fact that certain clauses in the Association and Liberalisation Agreements were applied ‘de facto’ in some cases to products originating in Western Sahara, the Court finds that **it has not been established that such a practice is the result of an agreement between the parties to amend the interpretation of the territorial scope of those agreements.** Moreover, a purported intention to that effect by the EU entails conceding that it intended to implement the agreements in a manner incompatible with the principles of self-determination and of the relative effect of treaties as well as the requirement of good faith under international law.

Having concluded that the Liberalisation Agreement does not apply to the territory of Western Sahara, the Court sets aside the judgment of the General Court which had reached the opposite conclusion and decides to adjudicate itself on the action brought by the Front Polisario. In that regard, it notes that, since the Liberalisation Agreement does not apply to Western Sahara, the Front Polisario is not concerned by the decision of the Council to conclude that agreement. **The Court therefore rejects the Front Polisario's action on the ground of lack of standing.**

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

Unofficial document for media use, not binding on the Court of Justice.

The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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⁴ The Vienna Convention on the Law of Treaties, concluded in Vienna (Austria) on 23 May 1969 (*United Nations Treaty Series*, Vol. 1155, p. 331).

⁵ Advisory Opinion of the International Court of Justice on Western Sahara (*ICJ Reports* 1975, p. 12).



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 01/18

Luxembourg, 10 January 2018

Advocate General's Opinion in Case C-266/16
Western Sahara Campaign v Secretary of State for Environment, Food and
Rural Affairs and Commissioners for Her Majesty's Revenue and Customs

According to Advocate General Wathelet, the Fisheries Agreement concluded between the EU and Morocco is invalid because it applies to the Western Sahara and its adjacent waters

By concluding that agreement, the EU was in breach of its obligation to respect the right of the people of Western Sahara to self-determination and not to recognise an illegal situation resulting from breach of that right and has not put in place the safeguards necessary to ensure that the exploitation of the natural resources of Western Sahara is for the benefit of the people of that territory

Western Sahara is a territory in North-West Africa, bordered by Morocco to the north, Algeria to the north-east, Mauritania to the east and south and the Atlantic to the west. Currently, the greater part of Western Sahara is occupied by Morocco, which considers it to be an integral part of its territory. A smaller part of that territory, in the east, is controlled by the Front Polisario, a movement which seeks to achieve the independence of Western Sahara.

The EU and Morocco concluded in 1996 an association agreement, in 2006 a partnership agreement in the fisheries sector ('the Fisheries Agreement')¹ and in 2012 a liberalisation agreement with respect to agricultural products, processed agricultural products and fish and fishery products. By judgment of 21 December 2016,² the Court of Justice, before which an appeal had been brought against the judgment on an action brought by the Front Polisario against the Council of the European Union, held that the association agreement and the partnership agreement concluded between the EU and Morocco were not applicable to the Western Sahara. That case did not, however concern the Fisheries Agreement, and consequently the Court gave no ruling on the validity of that agreement in its judgment.³

In the UK, the Western Sahara Campaign (WSC) is an independent voluntary organisation whose aim is to support the recognition of the right of the people of Western Sahara to self-determination. WSC claims, before the High Court of Justice (England and Wales), Queen's Bench Division (Administrative Court) that the Fisheries Agreement concluded by the EU and Morocco and the acts approving and implementing that agreement⁴ are invalid in so far as that agreement and those acts apply to the territory and waters of Western Sahara.

WSC consequently considers that the UK authorities are acting unlawfully in implementing that agreement and, in particular, granting preferential tariff treatment to products originating in Western Sahara that are certified as products originating in the Kingdom of Morocco. Further, WSC

¹ OJ 2006 L 141, p. 4. The conclusion of that agreement was approved by Council Regulation (EC) No 764/2006 of 22 May 2006 (JO 2006, L 141, p. 1). The Fisheries Agreement was supplemented by a 'protocol setting out the fishing opportunities and the financial contribution provided for in the Fisheries Partnership Agreement' (OJ 2013 L 328, p. 2). The conclusion of that protocol was approved by Council Decision 2013/785/EU of 16 December 2013 (OJ 2013 L 349, p. 1).

² Case: [C-104/16 P](#) Council v Front Polisario, see Press Release No. [146/16](#).

³ The Front Polisario is however challenging the Fisheries Agreement protocol before the General Court Case [T-180/14](#). The General Court has stayed proceedings in that case until the Court has given judgment in the WSC case on which the Opinion is delivered today.

⁴ In addition to the acts referred to in footnote 1, the action brought by WSC also concerns the validity of Council Regulation (EU) No 1270/2013 of 15 November 2013 on the allocation of fishing opportunities under the 2013 Protocol (OJ 2013 L 328, p. 40).

disputes the fact that the UK authorities have the ability to issue licences to fish in the waters adjacent to Western Sahara (since the agreement provides that EU fishing boats may, under certain conditions, fish within the fishing grounds of Morocco).

The High Court of Justice seeks to ascertain from the Court of Justice, first, whether an association such as the Western Sahara Campaign is entitled to challenge the validity of EU acts for a failure to comply with international law and, second, whether the Fisheries Agreement is valid under EU law. This is the first time that a request has been made under the preliminary ruling procedure for a review of validity with respect to international agreements concluded by the Union and their implementing acts.

In his Opinion today, Advocate General Melchior Wathelet proposes that the Court should answer **that it has jurisdiction to assess the legality of international agreements concluded by the EU, that an association such as WSC is entitled to challenge the legality of the Fisheries Agreement and that the Fisheries Agreement is invalid because it applies to the territory and waters of Western Sahara.**

As regards whether it is open to natural and legal persons to rely on the rules of international law within the framework of judicial review of an international agreement concluded by the EU, the Advocate General considers that it must be possible to rely in legal proceedings on the rules of international law which are binding on the EU, where their content is unconditional and sufficiently precise and where their nature and broad logic do not preclude judicial review of the contested act.

The Advocate General considers that those conditions are satisfied with respect to the three norms of international law relied on by WSC: (1) **the right to self-determination**, (2) **the principle of permanent sovereignty over natural resources in so far as it requires the exploitation of those resources to be for the benefit of the people of Western Sahara** and (3) **the rules of international humanitarian law applicable to the conclusion of international agreements concerning the exploitation of the natural resources of occupied territory**. The Advocate General concludes that **those norms can be relied on within the framework of judicial review of an international agreement concluded by the EU.**

The Advocate General then examines whether the Fisheries Agreement and the acts approving and implementing it are compatible with those three norms.

First, the Advocate General states that the people of Western Sahara have thus far been deprived of the opportunity even to exercise the right to self-determination on the conditions set out by the United Nations General Assembly. Western Sahara was integrated into the Kingdom of Morocco by annexation without the people of that territory having freely expressed its will on the matter. Since the Fisheries Agreement was concluded by Morocco on the basis of the unilateral integration of Western Sahara into its territory and Morocco's assertion of sovereignty over that territory, the people of Western Sahara have not freely disposed of its natural resources, as is however required by the right to self-determination. Accordingly, **the fisheries exploitation by the EU of the waters adjacent to Western Sahara established and implemented by the contested acts does not respect the right of the people of Western Sahara to self-determination.**

Since the assertion of Moroccan sovereignty over Western Sahara is the result of a breach of the right of the people of Western Sahara to self-determination, the Advocate General concludes that **the EU has failed to fulfil its obligation not to recognise the illegal situation resulting from the breach, by Morocco, of the right of the people of Western Sahara to self-determination and also not to render aid or assistance in maintaining that situation.** For that reason, in so far as they apply to the territory of Western Sahara and to the waters adjacent thereto, the Fisheries Agreement and the acts approving and implementing that agreement are incompatible with the provisions of the Treaties that require of the European Union that its external action should protect human rights and strictly respect international law.

The Advocate General considers also that Morocco's status as de facto administering power or occupying power in Western Sahara cannot justify the conclusion of the Fisheries Agreement.

First, the concept of 'de facto administering power' does not exist in international law. Second, Morocco is the occupying power in Western Sahara, but the manner in which the Fisheries Agreement was concluded does not comply with the rules of international humanitarian law applicable to the conclusion, by an occupying power, of international agreements applicable on the occupied territory.

Second, the Advocate General finds that most of the exploitation provided for by the Fisheries Agreement relates almost exclusively to the waters adjacent to Western Sahara (catches made in those waters representing around 91.5% of the total catches made in the context of the fisheries exploitation established by the Fisheries Agreement). It follows that the financial contribution paid to the Kingdom of Morocco pursuant to the Fisheries Agreement should almost exclusively benefit the people of Western Sahara. In the view of the Advocate General, the Fisheries Agreement does not contain the legal safeguards necessary for the fisheries exploitation to be for the benefit of the people of Western Sahara. In that sense, **the Fisheries Agreement and the other contested acts do not comply with the principle of permanent sovereignty over natural resources, or the rules of international humanitarian law applicable to the conclusion of international agreements concerning the exploitation of the natural resources of occupied territory, or, last, the EU's obligation not to recognise an illegal situation resulting from a breach of that principle and those rules, and not to render aid or assistance in maintaining that situation.**

For all those reasons, the **Advocate General concludes that the Fisheries Agreement is invalid.**

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of an EU act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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Press and Information

Court of Justice of the European Union

PRESS RELEASE No 21/18

Luxembourg, 27 February 2018

Judgment in Case C-266/16

The Queen, on the application of Western Sahara Campaign UK v
Commissioners for Her Majesty's Revenue and Customs and Secretary of
State for Environment, Food and Rural Affairs

The Fisheries Agreement concluded between the EU and Morocco is valid in so far as it is not applicable to Western Sahara and to its adjacent waters

Western Sahara is a territory in North-West Africa, bordered by Morocco to the north, Algeria to the north-east, Mauritania to the east and south and the Atlantic to the west. Currently, the greater part of Western Sahara is occupied by Morocco, which considers it to be an integral part of its territory. A smaller part of that territory, in the east, is controlled by the Front Polisario, a movement which seeks to achieve the independence of Western Sahara.

The EU and Morocco successively concluded an association agreement in 1996, a partnership agreement in the fisheries sector ('the Fisheries Agreement')¹ in 2006 and a liberalisation agreement with respect to agricultural and fisheries products in 2012. The Fisheries Agreement is supplemented by a protocol setting out the fishing opportunities which it lays down, and expires in July 2018.²

By judgment of 21 December 2016,³ the Court of Justice, hearing an appeal in the dispute between the Front Polisario and the Council of the European Union and the European Commission, held that the association agreement and the partnership agreement concluded between the EU and Morocco had to be interpreted, in accordance with international law, as meaning that they were not applicable to the territory of Western Sahara. That case did not, however concern the Fisheries Agreement, and consequently the Court gave no ruling on the validity of that agreement in its judgment.⁴

The Western Sahara Campaign (WSC) is an independent voluntary organisation whose aim is to support the recognition of the right of the people of Western Sahara to self-determination. WSC claims, before the High Court of Justice (England and Wales), Queen's Bench Division (Administrative Court) that the Fisheries Agreement and the acts approving and implementing that agreement⁵ are invalid in so far as that agreement and those acts apply to the waters adjacent to the territory of Western Sahara. WSC consequently considers that the United Kingdom authorities are acting unlawfully in providing for implementation of that agreement and, in particular, issuing licences to fish in the waters at issue.

¹ OJ 2006 L 141, p. 4. The conclusion of that agreement was approved by Council Regulation (EC) No 764/2006 of 22 May 2006 (JO 2006, L 141, p. 1).

² OJ 2013 L 328, p. 2. The conclusion of that protocol was approved by Council Decision 2013/785/EU of 16 December 2013 (JO 2013, L 349, p. 1).

³ Case: [C-104/16 P](#) Council v Front Polisario, see Press Release [No 146/16](#).

⁴ The Front Polisario is however challenging the legality of the Fisheries Agreement Protocol before the General Court (Case [T-180/14](#)). The General Court has stayed proceedings in that case until the Court has given judgment in the WSC case.

⁵ In addition to the acts referred to in footnote 1 and 2, WSC also disputes the validity of Council Regulation (EU) No 1270/2013 of 15 November 2013 on the allocation of fishing opportunities under the 2013 Protocol (OJ 2013 L 328, p. 40).

In those circumstances, the High Court of Justice sought to ascertain from the Court of Justice, inter alia, whether the Fisheries Agreement was valid under EU law. This is the first time that a request has been made under the preliminary ruling procedure for a review of validity formally covering international agreements concluded by the EU.

In today's judgment, the Court holds, in the first place, that it has jurisdiction to assess the validity of acts approving the conclusion of international agreements concluded by the EU and, in that context, **to assess whether such agreements are compatible with the treaties and the rules of international law which bind the EU.**

The Court examines, in the second place, the validity of the Fisheries Agreement. It notes that the British court seeks to determine whether the opportunity to exploit the natural resources in the waters adjacent to the territory of Western Sahara is compatible with EU law and international law. Such a question presupposes that those waters are included within the territorial scope of the Fisheries Agreement. Therefore, the Court first establishes the validity of that premiss.

In that regard, the Court notes, first of all, that the Fisheries Agreement is applicable to the "territory of Morocco", an expression equivalent to the concept of "territory of the Kingdom of Morocco" in the Association Agreement. As the Court has previously held in its judgment of 21 December 2016, that concept itself refers to the geographical area over which the Kingdom of Morocco exercises its sovereign powers under international law, to the exclusion of any other territory, such as that of Western Sahara. In those circumstances, **if the territory of Western Sahara were to be included within the scope of the Fisheries Agreement, that would be contrary to certain rules of general international law that are applicable in relations between the EU and Kingdom of Morocco, inter alia the principle of self-determination.**

The Court notes, next, that the Fisheries Agreement is applicable to "waters falling within the sovereignty or jurisdiction" of the Kingdom of Morocco. In accordance with the UN Convention on the Law of the Sea,⁶ the waters over which a coastal State is entitled to exercise sovereignty or jurisdiction are limited exclusively to the waters adjacent to its territory and forming part of its territorial sea or of its exclusive economic zone. **The Court therefore holds that, taking account of the fact that the territory of Western Sahara does not form part of the territory of the Kingdom of Morocco, the waters adjacent to the territory of Western Sahara are not part of the Moroccan fishing zone referred to in the Fisheries Agreement.**

Lastly, the Court examines the territorial scope of the Protocol to the Fisheries Agreement. Although that Protocol does not contain any specific provisions on that subject, the Court states that several of its provisions use the expression "Moroccan fishing zone". That expression is the same as that to be found in the Fisheries Agreement, which defines it as "waters falling within the sovereignty or jurisdiction of the Kingdom of Morocco". The Court concludes that **the "Moroccan fishing zone" under the Protocol does not include the waters adjacent to the territory of Western Sahara.**

The Court therefore holds that, since neither the Fisheries Agreement nor the Protocol thereto are applicable to the waters adjacent to the territory of Western Sahara, the EU acts relating to their conclusion and implementation are valid.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

⁶ The United Nations Convention on the Law of the Sea, concluded at Montego Bay on 10 December 1982 (United Nations Treaty Series, Vol. 1833, 1834 and 1835, p. 3), entered into force on 16 November 1994. Its conclusion was approved on behalf of the Community by Council Decision 98/392/EC of 23 March 1998 (OJ 1998 L 179, p. 1).