

WESTERN SAHARA AND THE EU-MOROCCO AGREEMENTS

From colonialism to occupation

The United Nations (UN) General Assembly resolutions [1514](#) of 1960, [2072](#) of 1965 and [2229](#) of 1966 declared the **need to end the Spanish colonial domination in Western Sahara and to organize a referendum to allow the Sahrawi people to exercise their right to self-determination.**

In 1974 Spain announced its willingness to hold a referendum, but the following year it signed the Madrid Accords, which ceded two-thirds of the Western Sahara territory to Morocco and the rest to Mauritania. Morocco and Mauritania thus entered into conflict with the **Popular Front for the Liberation of Saguia el-Hamra and Río de Oro (Polisario Front)**, founded in 1973 and recognized by the UN as the **legitimate representative of the Sahrawi people.** Three years later, the Polisario Front founded the Sahrawi Arab Democratic Republic (SADR), which, in 1979, concluded a peace treaty with Mauritania.

In 1975, through an *Advisory Opinion* requested by the UN General Assembly, the International Court of Justice confirmed the **absence of sovereign rights of Morocco and Mauritania over Western Sahara and re-affirmed the right to self-determination of the Sahrawi people.** Afterwards, Morocco organized the so-called **Green March**, whereby around 350,000 Moroccans entered Western Sahara to nullify the possible referendum, **thus contributing to the occupation that had already begun in the northern part of the territory of the Sahrawi people.** The conflict between the Polisario Front and Morocco ended only in 1991, with a ceasefire supported by the UN and the African Union.

To monitor the ceasefire and organize the referendum, in 1991 **the UN Security Council instituted the MINURSO mission (res. 690 of 1991)**, which has been constantly revised since then, but without obtaining significant results on the ground. While the negotiations for a peaceful solution to the conflict have stalled, **the ceasefire has been violated several times**, as demonstrated by the military reaction of Morocco to the blockade of the Gargarat passage, by which people and goods come and go, which was carried out by a Sahrawi group in October 2020.

Today, **Morocco continues illegally occupying a large part of Western Sahara and it has concluded a series of accords with the European Union (EU), within the framework of the Euro-Mediterranean Agreement and the Association Agreement which entered into force in 2000, both of which have a clear impact on the territory of the Sahrawi people.** The EU is Morocco's leading trading partner and the biggest foreign investor in the country. Total trade between the two has increased in the last two years and in 2022 it amounted to [53.3 billion euros in goods and 7.7 billion euros in services.](#) There are no relations between the EU and the SADR, because no EU member states recognize it.

The Polisario “saga” before the Court of Justice of the European Union (CJEU)

In the last few years, most of the agreements between the EU and Morocco have been the subject of a series of judgments by the CJEU. Despite raising a few issues, as the following analysis demonstrates, the appeals by the Polisario Front before the CJEU have contributed to the affirmation of a principle which is today quite clear: **under international law, the EU cannot conclude treaties with Morocco which apply to Western Sahara as well.**

Cases [T-512/12](#) and [C-104/16 P](#)

In its initial appeal, the Polisario Front affirmed that **the application to Western Sahara of the EU-Morocco agreement, which strengthened trade liberalization in agricultural goods and fisheries, contributed to the occupation of the territory and to the exploitation of its natural resources, contrary to the interests of the Sahrawi people** (para. 143-144 and 189-190 of the judgment).

In 2012, considering that the Polisario Front had the capacity to act before the judges of the EU, **the General Court of the European Union partially annulled the decision of the Council related to the conclusion of**



the agreement, in the part where it approved the application of the accord to Western Sahara (para. 247). The Court also argued that while concluding the agreement, **the Council should have made sure that “there was no evidence of an 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”** (para. 241; see also para. 228). Indeed, this exploitation, where certified, could have been “indirectly encouraged” by the agreement (para. 238). Therefore, according to the court, the Council had adopted the decision related to the agreement without conducting this prior examination, thus making a manifest error of evaluation (para. 244).

The Council appealed this judgment before the Court of Justice, which, although with a reasoning that did not lead to the annulment of the Council’s decision, reached a conclusion that protects the rights of the Sahrawi people (judgment C-104/16 P). According to the Court, **the principle of self-determination makes Western Sahara a non-autonomous territory with a separate and distinct status from every other State**, including the one to which it entrusted its administration, according to article 73 of the Charter of the UN. This means that, to determine the territorial application of the disputed agreement, **the words “territory of the Kingdom of Morocco” cannot be interpreted as including Western Sahara, which is unlawfully occupied** (para. 86-93). **In absence of the consent of the Sahrawi people, as a “third party” to the EU-Morocco agreement, the agreement cannot apply to Western Sahara** (para. 100-107).

Case C-266/16

In 2016 the High Court of Justice of the United Kingdom interrogated the CJEU about the validity of Union acts relating to international agreements concluded between the EU and Morocco in the fisheries sector, because they allowed **the exploitation of resources coming from the waters adjacent to Western Sahara**. Confirming the concepts expressed in judgment C-104/16 P (see above), the CJEU affirmed that, since **the agreements could not apply to the territory of Western Sahara and to its waters**, the disputed acts remained valid (para. 85).

Cases T-180/14, T-275/18, T-376/18

In 2018 **the General Court rejected three appeals by the Polisario Front** which aimed to contest acts of the Council relating to the conclusion or the modification of certain international agreements between the EU and Morocco, because of the **inapplicability of the acts to Western Sahara and to its waters**.

Cases T-279/19 and joined cases T-344/19-T-356/19

With two judgments issued in 2021, the General Court of the EU accepted the appeals by the Polisario Front, which aimed to annul Council decisions that approved the closing of two new EU-Morocco agreements modifying the Association Agreement and the Sustainable Fisheries Partnership Agreement. Indeed, **contrary to what had been stated by the CJEU since 2012 (see above), the disputed agreements extended explicitly their application to Western Sahara**. In both judgments the General Court stated that **the Sahrawi people must explicitly and effectively express their consent for any agreement to be applicable to its territory or the adjacent waters**. Differently from what had been sustained by the EU institutions, the consultations carried out for the purpose of approving the agreements had not effectively asked for the consent of the Sahrawi people through its representational organs, including the Polisario Front (para. 391, T-279/19; para. 364, joined cases T-344/19-T-356/19), in contrast with its right to self-determination. The Council’s decisions were therefore annulled. **The appeals initiated by the Council against these decisions are still pending**.

Edited by C. Danisi and S. Orbitello

Suggested readings:

- M. Balboni, G. Laschi (eds.), *The European Union Approach Towards Western Sahara*, Peter Lang, 2017.
- C. Danisi, *Self-Determination as a Peremptory Norm of International Law and Human Rights in Non-Self-Governing Western Sahara: A Test for the European Union*, in *Human Rights as a Horizontal Issue in EU External Policy*, M. Balboni, C. Danisi (eds.), Editoriale Scientifica, 2021, pp. 231-274.
- website on Western Sahara and human rights: www.HRsaharawi.com.