

Frente POLISARIO Representación para Europa

The European Union is about to make a serious mistake if the current fisheries agreement with Morocco goes forward, which includes the exploitation of the coasts belonging to the Saharawi territorial waters that are the subject of dispute and over which Morocco legally does not exercise any administration.

LEGALLY, it is well acknowledged that:

I. Prior to the Spanish colonisation of Western Sahara there were no ties between Morocco and Western Sahara nor was there any sovereignty of Morocco over the Territory, as stated in the legal opinion of the International Court of Justice of October 16, 1975. Therefore, the Court concluded that a free and fair process on self-determination was needed to determine the legal status of the territory in the framework of United Nations resolutions with regard to a Non self-governing territory.

II. Morocco's military invasion in October 1975, denied, by force, the people of Western Sahara the exercise of their right to self-determination; later on, Morocco committed what UN General Assembly resolution 2625 (XXV) called "international crime."

III. Morocco tried to use and interpret Madrid Agreement of November 14, 1975, as a reason for "legitimising" its occupation. However, Dr. Hans Corel, former UN Under-Secretary-General for legal Affairs sustained in his legal opinion of January 29, 2002, that "Madrid Agreement did not transfer sovereignty over the Territory, nor did it confer upon any of the signatories the status of an administering Power, a status which Spain alone could not have unilaterally transferred."

VI. In this sense, Morocco's presence in Western Sahara had already been described by the UN General Assembly resolution 3437 of 1979 as an "illegal occupation."

V. The latest UN Secretary-General report on the situation concerning Western Sahara of April 2006 (S/2006/249) stated that "no State member of the United Nations had recognised that sovereignty" of Morocco over Western Sahara, whilst informing the Security Council on the gross violations of human rights of the Saharawi population perpetrated by Moroccan security forces.

Morocco is neither the legitimate sovereign power nor the legal administering power as understood by the United Nations Charter (article 73). Therefore, any attempt to engage in agreements that involve the exploitation of the natural

resources of Western Sahara will be a clear violation of international law. This prospect is not going to enhance European Union's credibility as a major actor on world affairs.

These are the same principles that made the United States exclude the territory of Western Sahara and, consequently, the Saharawi natural resources from the Free Trade Agreement that it signed with Morocco in July 2004.

CONCLUSION

The European Union should comply with the dictates of international law, UN resolutions and the decisions taken by UN Member States regarding their negotiations with Morocco; all in all, international legality. The European Union cannot invoke it in some cases and rule it out in others, as it seeks to do in its fisheries agreement with Morocco.

This fisheries agreement is concluded with neither a *de facto* nor a *de jure* administering power, but with a *de facto* occupying power that, by signing it, seeks to obviate international legality with a view to perpetuating its occupation in Western Sahara.

Unfortunately, the EU, under self-interested pressure of few members, is about to make a great mistake by taking a dangerous path that may have irreversible consequences on the ongoing peace process in Western Sahara and consequently on the entire region. The EU cannot obviate nor defy the efforts deployed by the United Nations with a view to concluding the decolonisation process of the last colony in Africa.

In this sense, the question today is whether the EU will respect international legality and thus contribute to a just and lasting solution to the conflict, whilst taking into account the future of the Maghreb, or will it instead be encouraging injustice, aggression and violations of human rights in Western Sahara.

Therefore, to accept this illegal fisheries agreement as a "fait accompli" mitigated by some kind of arrangements relating to some benefits to the population is a false, poor and reprehensible policy that makes the damage much worse. The Saharawi population will not benefit from this agreement, as was the case of the former agreement. This agreement benefits only the Makhzen and the big Moroccan businessmen; thus, it goes against the wishes, violates the inalienable rights, and does not safeguard nor guarantee the interests of the Saharawi people, represented legitimately by the POLISARIO Front and divided by the wall that was constructed by Morocco between the Saharawi refugee camps in

and Western Sahara. By this, Morocco has sought to perpetuate the occupation of the territory by oppressing brutally the Saharawi population that is demonstrating constantly to demand the exercise of its right to self-determination. The oppression is carried out through continuous violations of human rights including torture, assassination, forced disappearances and summary trials without grantees of due process targeting prisoners of conscience.

In this sense, how will the European Union ensure that both the Saharawi refugee population in exile and the one living in Western Sahara will be beneficiary of this agreement? Which guarantees are there if Morocco's repression of the Saharawi population is increasing on daily basis? How the Saharawi population will benefit from this agreement if the fisheries and the attendant industries in Western Sahara are under the strict control of Morocco, and of which working force is also Moroccan?

Therefore, in the above-mentioned legal opinion of 29 January 2002, it is also stated that, "the General Assembly has consistently condemned the exploitation and plundering of natural resources and any economic activities which are detrimental to the interests of the peoples of those Territories and deprive them of their legitimate rights over their natural resources." It is stated moreover that, "the exploitation and plundering of the marine and other natural resources of colonial and Non-Self-Governing Territories by foreign economic interests, in violation of the relevant resolutions of the United Nations, is a threat to the integrity and prosperity of those Territories."

In effect, Morocco might have been a legal administering power in conformity with United Nations principles that, in this case, would have required Morocco to formally recognise that Western Sahara is a separate and distinct territory pending decolonisation. In fact, it might have been considered this, but this was not the case. "Morocco, however, is not listed as the administering Power of the Territory in the United Nations list of Non-Self-Governing Territories, and has, therefore, not transmitted information on the Territory in accordance with Article 73 *e* of the Charter of the United Nations.", as stated in Hans Corel's legal opinion.

We believe that including territorial waters of Western Sahara in the fisheries agreement concluded between the European Union and Morocco will be, in this legal, political and diplomatic context, a gross and tragic mistake that the Saharawi people and the POLISARIO Front will never forget, which will further aggravate the wounds of North Africa. The EU should avoid this mistake for the sake of peace, justice and international legality.