

THE ROLE OF EUROPEAN INSTITUTIONS IN THE DEFENSE OF HUMAN RIGHTS IN THE WESTERN SAHARA

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SUMMARY: 1. INTRODUCTION. 2. THE ROLE OF THE EUROPEAN UNION IN THE WESTERN SAHARA CONFLICT AND EUROPEAN INSTITUTIONS' INVOLVEMENT. 3. THE SITUATION OF THE HUMAN RIGHTS IN THE WESTERN SAHARA: AN OVERVIEW. 4. THE ROLE OF THE EUROPEAN UNION FOR THE DEFENSE OF THE HUMAN RIGHTS IN THE WESTERN SAHARA. DOUBLE STANDARD POLICY? 5. CONCLUSIONS. REFERENCES. 6. REFERENCES.

1. INTRODUCTION

The Western Sahara is one of the 17 Non-Self-Governing Territories listed by the UN¹. The 26th of February of 1976 Spain informed the UN Secretary General that its presence in the territory had ended, and that consequently, Spain considered itself exempt from international responsibility regarding the Territory². However, the Western Sahara Conflict, as affirmed by the

¹ <http://www.un.org/en/decolonization/nonselfgovterritories.shtml>

² There are many publications on the issue of the self determination of the Western Sahara that state clear that it was not legally possible to withdraw from the international responsibility without holding a self-determination referendum. See: SOROETA LICERAS, J.F., *El conflicto del Sahara Occidental, reflejo de las contradicciones y carencias del derecho internacional*, UPV-EHU, Bilbao, 2001; RUIZ MIGUEL, C., «Las obligaciones legales de España como potencia administradora del Sahara Occidental», *Anuario de*

United Nations (UN)³, is a decolonization problem that has to be solved by the celebration of a self-determination referendum.

The conflict of the Western Sahara is considered a «frozen» or «forgotten» conflict due to the little attention paid by the International Community and the little engagement to the conflict solution⁴. The attitude of European Institutions towards the conflict has been also passive and limited. In this article we focus on the role of the European institutions in the promotion and protection of human rights of the Sahrawi people.

The European stance towards the Western Sahara conflict could be divided in three different phases. First, from the start of the conflict in 1975 to the eighties, the Western Sahara Conflict was totally out from the European agenda. There was no institutional communication or resolution concerning neither the conflict, nor the status of the POLISARIO Front. It was not until 1981 that the European Parliament (EP hereinafter) first mentioned the issue of Western Sahara⁵, considering the conflict as a «cold war» conflict against the UN decolonization principles and legitimizing Moroccan arguments⁶.

The second phase started in 1987, with the EP Resolution on the Western Sahara addressing the concern for the detentions made in the framework of the UN and the African Union (AU) visit to the Territory⁷. Two years later, the EP expressed for the first time the interest of the EU on the conflict, and acknowledged for the first time the right of the Sahrawi people to self-determination and the celebration of a referendum⁸.

Finally, the third phase started at the end of the nineties, when the EP delivered many resolutions concerning the situation of human rights in the Occupied Territories. Besides, for the first time, the EP sent delegations for *in situ* visits in 2002 and 2009 to check the situation both in the Occupied Territories and the refugee camps in Tinduf. Therefore, this third period is particularly relevant for the issue of human rights situation.

Derecho internacional. XXVI, 2010, pp. 303-331; ZOUBIR, Y. H., «Stalemate in Western Sahara: ending international legality». *Middle East Policy*, 2007, vol. 14, no. 4.

³ GENERAL ASSEMBLY, Resolution 2229-XXI, 1967 and Resolution 3162-XXVIII 1973.

⁴ DUNBAR, C., «Saharan Stasis: Status and future prospects of Western Sahara Conflict», *Middle East Journal*, 2000, vol. 54, no. 4, p. 522; ZOUBIR, Y., «Morocco, Western Sahara, and the future of the Maghrib», *Journal of North African Studies*, 2004, vol. 9, no. 1, p. 49.

⁵ EUROPEAN PARLIAMENT. Resolution on Western Sahara. 12th March, 1981.

⁶ TORREJÓN RODRIGUEZ, J.D., *La Unión Europea y la cuestión del Sahara Occidental. La posición del Parlamento Europeo*. REUS, Madrid, 2014, p. 57.

⁷ EUROPEAN PARLIAMENT. Resolution on Western Sahara. B2-1453 and 1454/87. 17 December 1987.

⁸ EUROPEAN PARLIAMENT. Resolution on Western Sahara, 15th March 1989.

Nevertheless, these three stages were at the same time confronted to the European political agenda on Security and Stability in the Maghreb, captured in the Euro-Mediterranean Partnership and the Barcelona Declaration adopted at the Euro-Mediterranean Conference at the end of November 1995. Morocco became in the framework of this policy a key political and economic ally, despite the situation of human rights in the country. This political incoherence has been called the «double standard» policy⁹.

This article maintains that this so called «double standard» policy is translated also to the protection of human rights. Hence, while the European institutions visibly concern about civil and political rights in the Occupied Territories and condemn the precarious conditions of the Sahrawi Refugees, European economic interests overwhelm the guard of the Sahrawi people's cultural, economic and social rights.

To confirm this argument, this paper will examine the attitude of the different European institutions towards human rights violations along the conflict to determinate if the approach to the economic, social and cultural rights has been equally sound to the promotion of civil and political rights.

This article is structured in three sections. The first part describes the role of the EU in the Western Sahara Conflict and European Institutions' involvement. Following BALBONI, this involvement will be analysed by focusing on the positioning of the EU in the Western Sahara conflict through the analysis of three different areas: The European External policy; the positioning of the EP; and the role of member states¹⁰. The second section is focused in giving an overview of situation of human rights in Western Sahara from the beginning of the conflict in 1975 up to date, structured in three different stages: from the invasion of the territory by the Moroccan and Mauritania armies to mid-eighties in the past century; from the eighties to 1998, when the second attempt of holding the referendum failed; and finally from the first Intifada in 1999 up to now. Lastly, after a brief overview of the situation of human rights during the conflict and nowadays under the occupation, we analyse the role of the European institutions in the promotion and protection of human rights of the Sahrawi people.

⁹ ÚBEDA DE TORRES, A., «La evolución de la condicionalidad política en el seno de la Unión Europea», *Revista de Derecho Comunitario Europeo*, 2009, no. 32, p. 76; SOROETA LICERAS, J., «La posición de la Unión Europea en el conflicto del Sahara Occidental, una muestra palpable (más) de la primacía de sus intereses económicos y políticos sobre la promoción de la democracia y de los derechos humanos». *Revista de Derecho Comunitario Europeo*, no. 34, 2009, p. 831.

¹⁰ BALBONI, M., *Paper presented at the Conference organised by the South African Department of Foreign Affairs, on Multilateralism and International Law with Western Sahara as a Case Study*, Pretoria, South Africa, 4-5 December 2008.

It has been argued that the EU has adopted a clear position of advocacy of human rights opposite to the political stance in the conflict, as the EU has aligned itself close to Moroccan interest. However, we argue that this incoherence is also translated to the protection of human rights. To confirm this argument, this paper will exam the attitude of the different European institutions towards human rights violations along the conflict to determinate if the approach to the economic, social and cultural rights has had the same soundness than the promotion of civil and political rights.

2. THE ROLE OF THE EUROPEAN UNION IN THE WESTERN SAHARA CONFLICT AND EUROPEAN INSTITUTIONS' INVOLVEMENT

It is commonly agreed that the role played by the EU in the Western Sahara conflict has been residual, characterized by a low level engagement¹¹. Even though the EU has monitored the evolution of the conflict¹², the involvement of the EU was considerably lesser than in other conflicts.

As many authors such as YILDIZ, BENABDALLAH or VAQUER I FANES have pointed out contrary to its role in other international conflicts, for instance in Cyprus, Israel-Palestine, or the Balkans, the EU engagement in the Western Sahara conflict has been low¹³. The EU has backed the conflict resolution within the framework of the UN efforts to solve the question of the Western Sahara. However, it has not played a diplomatic role in the conflict¹⁴ and the struggle is not on the its policy agenda¹⁵ even though it is central for the stability in the Maghreb, which was defined as a political priority due to both security and politic-economic reasons¹⁶. Therefore, EU policy towards the Western Sahara has been framed within the so-called Euro-Mediterranean partnership and the Barcelona Declara-

¹¹ YILDIZ, U., «The European Union's position on the Western Sahara Conflict: A barrier to Mediterranean Cooperation», *Marmara Journal of European Studies*, 2013, vol. 21, no. 1, p. 47; DARBOUCHE, H. and COLOMBO, S., «The EU, Civil Society and Conflict Transformation in Western Sahara: The Failure of Disengagement», *MICROCON Policy Working Paper*, no. 13, 2010, p. 5.

¹² SOROETA LICERAS, J., «La posición de la Unión Europea...», *op. cit.*

¹³ YILDIZ, U., «The European Union's position...», *op. cit.*; VAQUER I FANES, J., «The European Union and the Westen Sahara» *European Foreign Affairs Review*, 2004, vol 9, no. 1, pp. 93-113.

¹⁴ BENABDALLAH, K., «The Position of the European Union on the Western Sahara Conflict», *Journal of Contemporary European Studies* 17, no. 3 (December 2009), p. 433.

¹⁵ GILLESPIE, R., «European Union responses to conflict in the western Mediterranean», *The Journal of North African Studies*, 2010, vol. 15, no. 1, p. 89.

¹⁶ VAQUER I FANES, J., «The European Union...», *op. cit.*, p. 103.

tion adopted at the Euro-Mediterranean Conference at the end of November 1995¹⁷.

During the first years of the conflict, the EU-European Community (EEC) by that time-remained indifferent. Its first declarations claimed for neutrality but in fact the EU considered the conflict as «African» and just overlooked it¹⁸. In 1988 with the first attempts for a peace agreement, the EEC uttered the support for the UN and to the celebration of the referendum¹⁹. This support for the UN became the common basis for the declarations of the EU around the conflict, calling for a peaceful solution of the conflict. According to VAQUER I FANÉS, the only EU input to the political statements on the conflict came in 1999, with the request for «confidence-building measures and the humanitarian concern»²⁰.

However, this apparent neutrality was not real. The EU, particularly through the European Commission, established a special relationship with one of the parties, Morocco, reflected in the Association Agreement in the first place, and in the latter «Advance statute»

The cooperation between the European Institutions and Morocco started in July 1969 when an agreement was signed for five years, linking Morocco to the EEC for commercial purposes. In 1976, in the framework of the Global Mediterranean Policy, the EU concluded bilateral agreements with the Maghreb countries: Morocco, Algeria and Tunisia. These agreements became effective in 1978 and provided for economic and financial aid further than the strict framework of commercial cooperation²¹.

Between 1981 and 1986 cooperation agreements and financial protocols were renewed and translated into economic flows. Thus, four financial protocols were signed between 1976 and 1996. During this period, Morocco re-

¹⁷ SOLÀ-MARTÍN, A., «Conflict resolution in Western Sahara», *African Journal on Conflict Resolution*, 2009, vol. 9, no. 3, p. 125.

¹⁸ Official Journal C276, 22-11-1976, p. 4 quoted by VAQUER I FANÉS, J., «The European Union...», *op. cit.*, p. 103.

¹⁹ SOROETA LICERAS, J. «La posición de la Unión Europea...», *op. cit.*, p. 844.

²⁰ VAQUER I FANÉS, J., «The European Union...», *op. cit.*, p. 10.

²¹ At the same time, the EC started at the end of the seventies to apply a conditional policy related to the defense of Human Rights. In 1977 suspended the aid allocated under the Lomé I Convention to Uganda following a massacre, setting the origin of the so called «democratic clauses». See: ALBERDI BIDAGUREN, J., «La gobernanza democrática y la protección de los derechos humanos en la Asociación UE-África: ¿condicionalidad positiva o injerencia política?», *Revista de Derecho Comunitario Europeo*, 2011, vol. 15, no. 38, p. 129-154; LAVENEX, S. & SCHIMMELFENNIG, F., «EU democracy promotion in the neighbourhood: from leverage to governance?», *Democratization*, 2011, vol. 18, no. 4, p. 885-909; BARTELS, L., *A Model Human Rights Clause for the EU's International Trade Agreements*. German Institute for Human Rights and Misereor, Berlin, 2014.

ceived € 574 million from the EU budget and € 518 million in loans from the European Investment Bank²².

Following the establishment of the Euro-Mediterranean Partnership in Barcelona in November 1995²³, the EU settled the Association Agreement with Morocco, entering into force in March 2000 and including a «democratic clause»²⁴. This new agreement extended the cooperation to political dialogue and cultural exchange. Through MEDA program, the financial instrument of the EMP, and between 1996 and 2006, the Alawite State received € 1.5 million which made it the largest beneficiary of EU funds all Mediterranean partners²⁵. The Euro-Mediterranean Partnership was replaced by the European Neighborhood and Partnership Instrument (ENPI) in 2004, the financial instrument of the European Neighborhood Policy (ENP), through which Morocco also was highly funded. In 2008, EU and Morocco signed a common document to agree an «Advanced Statute». This «Advanced Status» foresaw a development on the dialogue between the European Institutions and Morocco but, in general, was merely declarative and did not go further than the ENP. However it meant a strong political commitment between the parties.

ENP included a chapter related to democracy, rule of law and fundamental freedoms, which included financial support for capacity building in public administration, justice, modernization of legal procedures, support the implementation of the Equity and Reconciliation Committee (ERC), adherence to international conventions on human rights, fighting corruption, strengthening the dialogue on human rights, freedom of expression, among others²⁶. A new Action Plan under the ENP was adopted in December 2013 and it will last until 2017. Thus, with the support of the EU, the Kingdom of Morocco began its modernization and its path to democracy and rule of law. For example, in 1990 King Hassan II established the Consultative Council for Human Rights (CCDH), the body responsible for assisting the monarch in «all matters relating to human rights»²⁷ that gave rise to the ERC, established in 2004.

²² YILDIZ, U., «The European Union's position...», *op. cit.*, p. 47.

²³ For further information see: GILLESPIE, R. (ed.), *The Euro-Mediterranean partnership: political and economic perspectives*. Routledge, London and New York, 2013.

²⁴ The Association Agreement was signed in 1996 between the EU and Morocco. Its Art.2 stated that: «Respect for the principles of democracy and human rights will constitute an essential element of the Agreement...», LOCE L7/2-18-3-2000. Available at: http://trade.ec.europa.eu/doclib/docs/2006/march/tradoc_127906.pdf Date of access: 28th August 2015.

²⁵ YILDIZ, U., «The European Union's position...», *op. cit.*, p. 48.

²⁶ IGLESIAS, M., *Conflicto y cooperación entre España y Marruecos (1956-2008)*, vol. 9, Centro de Estudios Andaluces. Sevilla, 2010, p. 246.

²⁷ Dahir no. 1.90.12, Article 1.

However, all this democratic transition initiated by Morocco with the EU support hid for a long time the situation of the Sahrawi people in the occupied territories. By the time the situation in the Western Sahara came to light, the EU through the EP issued reports and resolutions, which expressed concern about the situation, but without endangering the close relations of financial and trade cooperation with the Moroccan ally.

Hence, besides the general cooperation agreements, EU and Morocco have signed sectorial agreements on fisheries and agriculture. However, the EU does not include human rights and democracy clauses in these sectorial trade agreements with third countries²⁸. In addition to the political interest and attitudes toward the conflict, the EU has strong economic interests in the area, due to the richness of the territory in natural resources. In fact, according to SOROETA, the EU gives preference to the economic interest to the promotion of human rights, the international law, and even to own EU norms (democratic clause)²⁹. This contradiction has been called «double standard policy» as the defense of human rights applies only in certain cases while in others, as the Moroccan, human rights violations have no consequences³⁰. This incoherence is clear in the case of the fisheries agreement between the EU and Morocco, in the Agriculture Agreement and in the case of the hydrocarbons³¹. It is true that, as we have mentioned, sectorial agreements, as fisheries, do not include «democratic clauses». Nevertheless, in the case of the Western Sahara products (fish, phosphate, tomatoes...) the exploitation itself means a violation of Sahrawi's economic rights.

Only the EP has tried to guarantee the rights of the Sahrawi people regarding the exploitation of the natural resources, and in December 2011, refused to approve the extension of the 2006 EU-Morocco Fisheries Agreement. Yet, in 2012, the EP also contradicted itself by approving the EU-Morocco Agriculture Agreement that included the Western Sahara territories³² and in 2013 renewed again the Fisheries Agreement protocol with Morocco.

The EP has also been concerned about the situation and violation of the Sahrawi people's rights. Nevertheless, we agree with TORREJÓN and URRUELA when they argue that the position of the European institution has not been constant³³. It is very striking that despite the emergence of the conflict it was

²⁸ BARTELS, L. *A Model Human Rights Clause...*, *op. cit.*, p. 6.

²⁹ SOROETA LICERAS, J., «La posición de la Unión Europea...», *op. cit.*, p. 831.

³⁰ ÚBEDA DE TORRES, A., «La evolución...», *op. cit.*, p. 76.

³¹ SOROETA LICERAS, J., «La posición de la Unión Europea...», *op. cit.*, pp. 833-836.

³² YILDIZ, U., «The European Union's position...», *op. cit.*, p. 47.

³³ URRUELA, A., «El Parlamento Europeo frente al conflicto del Sahara Occidental» 1995, *Papers* 46, p. 112; TORREJÓN RODRIGUEZ, J.D., *La Unión Europea...*, *op. cit.*, p. 21.

not until 1981 that the EP first made a statement about the conflict. Besides, this first resolution on Western Sahara had a strong pro-Moroccan appeal, referring to the controversy as a local issue without even mentioning the POLISARIO Front. It is important to notice, following URRUELA, that the activity of EP on the issue is linked to the parliamentary initiative, which explains the increased interest of the chamber after Spain and Portugal joined the EC. It was then in 1989 that the EP first recognized the right of self-determination of the Sahrawi people³⁴. Since 2000, the EP maintained an active stance through its group 'Intergroup Peace for the Sahrawi People', under the presidency of the German socialist member of the European Parliament Margot Kessler³⁵.

The positioning of the European institution, as it has been previously mentioned, is highly conditioned by the stance of member states, and particularly by Spain's and France's attitude. In this sense, the extent to which EU common foreign policies can be successful is controversial, because in many cases the EU states' policies is in conflict with the promotion of international law and human rights³⁶.

On the one hand, Spain is concerned by the situation of the colony, as it is legally the administrative power of the territory, and civil society in Spain is strongly engaged with the Sahrawi people and the situation of both refugees in Tinduf and the population under occupation. However, the attitude of the different governments and main political parties has been influenced by the strategic partnership with Morocco, and Spain has not played the role other European countries as Portugal played in the promotion of the self-determination of former colonies.

On the other hand, France has clearly supported Morocco and Moroccan thesis about the territory and the conflict. Moreover, France has promoted the Moroccan proposal of Autonomy and vetoed the last Security Council resolutions proposals dealing with the promotion of human rights in the Occupied Territories³⁷.

Other member states have also made efforts to promote democracy, good governance, and human rights in Morocco. For example, Germany supports sustainable development; environment and natural and water resources; Austria supports actions related to agriculture and environment; Belgium focuses on water, informal training, agriculture, health, infrastructure and research;

³⁴ EUROPEAN PARLIAMENT. Resolution on Western Sahara, 15th March 1989. DOCE, C 96, de 7.04.1989.

³⁵ SOLÀ-MARTÍN, A., «Conflict resolution...», *op. cit.*, p. 126.

³⁶ SOLÀ-MARTÍN, A., «Conflict resolution...», *op. cit.*, p. 126.

³⁷ CAPELLA SOLER, R., «Los derechos humanos, ¿un obstáculo para la paz en el Sáhara Occidental?», *Boletín Elcano*, 2011, no. 134, p. 8.

Spain promotes health, basic social infrastructure, training, urban rehabilitation, agriculture and tourism; and France invests in modernizing the public sector and private sector development³⁸.

Therefore, in our opinion, the EU has shown not only little engagement in the conflict resolution, but has also been incoherent. A strict application of the international law and its own policies applied in other contexts to the case of Western Sahara would mean a stronger implication of the EU in the peace process, and also in the protection of Sahrawi people. It is argued that the role of the EU as the larger donor for humanitarian aid and the support in the promotion of human rights in the occupied territories makes EU positioning consistent. In the following pages we will analyze the real implication of the EU institutions in the defense of human rights of the Sahrawi, in the refugee camps and in the occupied territories, to see to what extent the engagement is real, and if it is consistent both in civil and political rights and in economic and social rights, which are often set aside.

3. THE SITUATION OF THE HUMAN RIGHTS IN THE WESTERN SAHARA: AN OVERVIEW

The conflict in Western Sahara is a clear example of a struggle arising from an unfinished decolonization process in which, despite the clarity of the international law on decolonization, the international community has been unable to end a dispute that has lasted four decades.

Since the beginning of the conflict, there have been a multitude of historical, political and legal approaches to the Sahara conflict, most of them focused on the question of self-determination of the Sahrawi people, either analysing the evolution and development of the positions of the parties, the political motivations for such positions, or confirming the legal arguments of the right of the Sahrawi people to self-determination. However, so far, few analyses have focused in an extremely important area of international law: human rights violations that have occurred over the 40 years of the conflict and the impact of such violations for both the Sahrawi and Moroccan population. Since the start of the conflict in 1975, when both Morocco and Mauritania occupied the territory after Spain's withdrawal, the intensity and magnitude of the human rights violations have been similar, or even higher, than in conflicts such as Latin-American dictatorships³⁹.

³⁸ KAUSCH, K., «How serious is the EU about supporting democracy and human rights in Morocco?», *Democracy Working papers*, ECFR/FRIDE, 2008, p. 10.

³⁹ BERISTAIN, C. and GONZALEZ HIDALGO, E., *El Oasis de la Memoria*, vol. I y II. Ed. Hegoa-UPV-EHU, Bilbao, 2012, p. 49.

We have identified three different periods in the historical evolution of violence in the context of the struggle. The first one started with the onslaught of the territory by the Moroccan and Mauritania armies and lasted until the mid-eighties. The second phase went from the eighties to 1998, when the second attempt of holding the referendum failed. Lastly, the third phase started in 1999 with the first *intifada* and persists today.

The first stage began when, after signing the Madrid Agreements, the Moroccan and Mauritanian armies invaded the territory. Although the possibilities of access to the area for the media were scarce, the testimony of this slaughter was reflected not only in numerous media, but in reports of the Red Cross and Amnesty International. Some authors have stated that the occupation by the Moroccan and Mauritanian armies triggered a real slaughter of civilians⁴⁰. During this stage, the violations of human rights by the Moroccan and Mauritanian armies were intended to eliminate all those who had a direct or indirect relationship with the POLISARIO⁴¹. These violations occurred selectively, through arbitrary detentions⁴² and enforced disappearances⁴³ and

⁴⁰ CISTERÓ, J.M. & FREIXES, T., *Sáhara. Una lección de historia*. Barcelona, Altgraf, 1987, p. 37; LIPPERT, A. «The human costs of War in Western Sahara», *Africa Today*, vol. 34, no. 3, 1987, p. 52; BONTEMS, C., *La guerre du Sáhara Occidental*. Press Universitaires de France, 1984, p. 150.

⁴¹ BERISTAIN, C. and GONZALEZ HIDALGO, E., *El Oasis...*, *op. cit.*, p. 83.

⁴² During the invasion of the territory by the Moroccan and Mauritanian armies as well as during the settlement of the settlers, an intense campaign of arrests of Sahrawi people started, either by linking them directly or indirectly with the POLISARIO Front, or simply for belonging to the Sahrawi collective. This campaign of arrests, usually accompanied by violence, intimidation and torture, was prolonged in time and directed indiscriminately against men, women, children and elderly or in public places, in nomadic settlements or private homes. Many of these arrests resulted later in other types of attacks, such as disappearances, temporary or forced, or executions. According to data provided by Morocco in the report by the ERC (IER 2009) many of the people that were missing in the first moments of the occupation died a few days or hours after the detention, either as a result of torture, or executed. According to the testimony of some witnesses contained in the report of BERISTAIN & GONZÁLEZ HIDALGO (*op. cit.*, p. 189) some of these executions were carried out in mass graves, where they even buried people alive, including the case of children.

⁴³ Many of the people who were arrested at this stage are still missing today, and their relatives have not obtained a response from the occupying authorities, or have received incomplete, contradictory or containing false information. The magnitude of enforced disappearance in the Saharan context varies depending on the data used, since it is precisely the lack of information and the lack of data on missing people what, motivates a wide disparity in the figures provided by different agencies and sources. Some of those people who disappeared during the first moments of the occupation were taken to clandestine detention centers. 249 of them were released in 1991 after being disappeared up to 18 years, during which their family had no information about the whereabouts and circum-

temporary and indiscriminately through attacks on civilians by bombing with white phosphorus and napalm⁴⁴, poisoning wells and looting of property⁴⁵.

The second stage was characterised by systemic violence and repression. As OPGENHAFFEN and FREEMAN have stated, during the late eighties and early nineties, human rights violations were widespread and systematic⁴⁶. During these years the exercise of violence against the Sahrawi population in the occupied territories was carried out in two ways. The first was the arrest and disappearance of people suspected of sympathising with the POLISARIO Front; the second, continuous and systematic harassment by the security forces of the Sahrawi community. This policy was part of the overall strategy of repression developed by Hassan II to consolidate as Head of State, and which resulted in the designation of this stage as «the years of lead».

Paradoxically, while the exercise of state violence evolved into new human rights violations, Morocco, pressed both at the national and international level, began to take steps in order to improve its image in field of human rights⁴⁷.

stances of the disappearance. (List of released from Kal-et Maguna published in the report on the monitoring of the activation of the recommendations of the ERC.)

⁴⁴ Although an exact figure of those who fled before the invasion of the territory cannot be provided, based on the latest census conducted by the administering power in 1974 (SEGURA I MAS, A., «Las dificultades del Plan de Paz para el Sahara Occidental, 1988-1995» *Cuadernos Bakeaz*, no. 16, agosto de 1996), and contrasting it with data subsequently provided by MINURSO, HIDALGO and BERISTAIN affirm that almost half of the Sahrawi people fled the territory, making this exodus of people in the largest exodus of population conducted in such a short period of time (BERISTAIN & GONZALEZ HIDALGO, *op. cit.*, p. 84; OLLÉ SESÉ, M., «Justicia Universal y Sáhara» en AFAPREDESA (2005). *Sahara Occidental ¿Hasta cuándo?*, Situación de los derechos humanos en Sáhara Occidental, Tercera Prensa, Donostia-San Sebastián, 2005, p. 146). At first, Saharawi people fled into the territory in the hope of a speedy resolution and trusting that they would not be abandoned by Spain. The population was concentrated in several temporary camps, like Um Draiga, Guelta or Tifariti. They were bombed in February 1976 with phosphorus and napalm. Despite the seriousness of the attack, these bombings were not investigated until 2012. Recently a monographic about the bombings has been published: BERISTAIN, C.M (dir.), *Los otros vuelos de la muerte*, Ed. Hegoa-UPV-EHU, Bilbao, 2015.

⁴⁵ During this stage of exodus and flight of the population, despite the spreading of terror through the disappearance and execution of persons, there was looting and destruction of numerous herds of cattle and attacks to the livelihood of nomad families. These acts, clearly prohibited in international standards contributed to increase terror and fear among the population, forcing their flight to the refuge, but also contributed to malnutrition and diseases of the nomad population, as well as an attack to the nomadic way life.

⁴⁶ OPGENHAFFEN, V. and FREEMAN, M., *Transitional Justice in Morocco: A Progress Report*, International Center for Transitional Justice, New York, 2005, p. 7.

⁴⁷ AFAPREDESA, *Sahara Occidental ¿Hasta cuándo?*, Situación de los derechos humanos en Sáhara Occidental, Tercera Prensa, Donostia-San Sebastián, 2005, 139; HU-

Finally, the third phase commenced in 1999 with the first *Intifada*. In September 1999, the Sahrawi people, in response to the political and economic situation started an *Intifada* in the occupied territories. Students and workers of the company Fosbucraa convened in the city of El Aaiun, an event that led to an intense social movement for several days. From these events, the *modus operandi* regarding human rights abuses was consolidated in the form of arbitrary detention, most often resorted to aggression and rape, torture and prolonged imprisonment under offenses to the Criminal Code. Also, the Moroccan settlers, organized in groups and backed by the authorities, began to damage buildings owned by the Sahrawi population, which moved the conflict directly to society.

In 2005 the second *Intifada* took place and it was also answered through mass repression and abuses. However, this *Intifada* meant a turning point as we will further explain later. This *Intifada* had its origin in the refusal to relatives of people imprisoned in the Black Prison of El Aaiun to allow visits to prisoners. In addition, various peaceful activities were organized by human rights activists, sit-ins and demonstrations, around the International Day of the Rights Human and International Women's Day 2004. This organizational strengthening of civil society had an impact, not only at the local level for channelling demands to local authorities, but also at international level to institutions such as ERC or the working group on Forced Disappearance of the United Nations. All these circumstances culminated in a social explosion that first achieved to break the media blockade imposed by the Moroccan regime on the question of Western Sahara in general and particularly on the situation of human rights in the Occupied Territories: the Gdem izik camp in 2010.

In September 2010 a group of Sahrawi people set up camp in the desert on the outskirts of the city of El Aaiun, in order to demand their political, social, economic and cultural rights. The claim was gaining strength until it captured the attention of international public opinion as a movement of peaceful civil resistance⁴⁸. Throughout the month of October and early November negotiations between a liaisons group of the camp and the Moroccan authorities took place. While talking, the camp was surrounded by about 3,000 agents from the security forces of the State⁴⁹ and on 8 November, at dawn, they stormed the place, in which there were between 20,000 and 25,000 people⁵⁰.

MAN RIGHTS WATCH, *Morocco's Smiling Face and Heavy Hand*, 2015, p. 124. OPGENHAF-FEN, V. and FREEMAN, M. *Transitional Justice... op. cit.*, pp. 7-8.

⁴⁸ WILSON, A., «On the margins of the Arab Spring», *Social Analysis*, 2013, vol. 57, no. 2.

⁴⁹ AMNESTY INTERNATIONAL, *Derechos pisoteados. Protestas, violencia y represión en el Sáhara Occidental*, 2010, p. 10.

⁵⁰ BERISTAIN, C. and GONZALEZ HIDALGO, E., *El Oasis...*, *op. cit.*, p. 435.

The Moroccan government continues to perpetrate serious human rights violations despite the commitments to the international community. Torture is a clear example. Moroccan authorities have accepted the competence of the UN Committee against Torture to receive communications from individuals alleging violations of the Convention against Torture and Other Cruel, Inhuman or Degrading in Morocco and Western Sahara. In addition, the new Constitution approved in 2011 enshrined in its Article 22 the prohibition of torture. However, according to human rights organizations reports, torture persists. Amnesty International presented a specific report focused in this issue last May⁵¹. It is important to note that, not only the Moroccan authorities keep violating human rights, particularly in the Western Sahara, but also that the situation nowadays is even worse because there are both national and international instruments that could punish this practice and they are not fulfilling their role. Moreover, what is even more perverse is that the authorities have resorted to prosecution and imprisonment of people who have denounced abuses, on charges of «false allegations» and «slander against the security forces.»

Another example is the military justice code that was amended in January 2015 to avoid military trials to civilians. Nevertheless, earlier in 2015 two civilians were tried under a military court, following the cases of many other civilians sentenced by military courts in recent years, including 22 Sahrawi convicted for the «Gdeim Izik» riots⁵².

But maybe the most disturbing point is the increase of tension between Sahrawi people and Moroccan settlers. Since the Gdem Izik revolt, when already Moroccan settlers staged attacks to civilians, the tension and hostilities between civilians has gained intensity, even affecting human right activists or institutions visiting the region⁵³. This situation has resulted in 2015 in the death of Mohamed Lamin Haidala due to a fight with Moroccan settlers.

Finally, the apparent improvements on the human rights situation in the region contrasts with the problems faced by human rights institutions to visit and interview victims and witnesses. The expulsion of two Amnesty International experts from Morocco in June 2015 is a «blatant attempt to prevent legitimate human rights research and muzzle criticism in the country»⁵⁴. The Amnesty International activists were expelled despite having informed authorities of their planned visit and having received the authorisation of Moroccan authorities to visit the country.

⁵¹ AMNESTY INTERNATIONAL, *Morocco: Shadow of impunity: Torture in Morocco and Western Sahara*, 2015.

⁵² HUMAN RIGHTS WATCH, *Morocco's...op. cit.*, p. 124.

⁵³ BERISTAIN, C. and GONZALEZ HIDALGO, E., *El Oasis...*, *op. cit.*, p. 466.

⁵⁴ See <<https://www.amnesty.org/en/latest/news/2015/06/amnesty-international-staff-members-expelled-from-morocco/>> Date of access 28 September 2015.

As we have already mentioned, the Sahrawi *Intifada* of 2005 marked a turning point in the treatment of human rights by the parties and the international community. Serious human rights violations that occurred in the territory were collected in a secret report leaked UNHCHR in the internet in 2006. The publication of the report coincided with the creation of the ERC and the apparent bet Mohamed VI to improve the situation of human rights in the country. The POLISARIO Front's contribution came, in its 2007 National Congress, when for the first time demanded to the UN the oversight of human rights by MINURSO.

As a result of the change in the language in the United Nations Security Council resolutions since 2000⁵⁵, in 2013 a vitally important fact occurred: for the first time, within the so-called «group of friends Western Sahara» United States proposed a draft resolution dealing with the situation of human rights at the occupied territories⁵⁶. Since then this debate has been repeated in the Security Council on the inclusion of human rights on the agenda and particularly, on the extension of the mandate of MINURSO. However, due to French pressure, this resolution was not adopted and yet in 2015 MINURSO has no competence in the monitoring of human rights in the territory.

Regarding the situation of Sahrawi refugees in Algeria, many International Organizations have visited the camps. Even though some complaints of human rights abuses were addressed during the 80s, in general terms there is a consensus on the respect for human rights at the camps.

Forty years after the Sahrawi refugee crisis started, the social pressure on Sahrawi refugees and the problems concerning their humanitarian situation are becoming ever more unbearable⁵⁷.

⁵⁵ FISAS, V., «El proceso de paz del Sáhara Occidental: Una propuesta de salida negociada», *Quaderns de Construcció de Pau*, 2011, no. 18, p. 7; CAPELLA SOLER, R., «Los derechos humanos...», *op. cit.*, pp. 7-8. The Security Council started in 2010 to stress the «importance of making progress on the human dimension of the conflict as a means to promote transparency and mutual confidence through constructive dialogue and humanitarian confidence-building measures» (S/RES/1920 (2010)). This new path went further in the Resolution of 2011 («Stressing the importance of improving the human rights situation in Western Sahara and the Tindouf camps, and encouraging the parties to work with the international community to develop and implement independent and credible measures to ensure full respect for human rights, bearing in mind their relevant obligations under international law», S/RES/1979 (2011) and consolidated in the Resolutions afterwards (S/RES/2044 (2012); S/RES/2099 (2013); S/RES/2152 (2014) and S/RES/2218 (2015)).

⁵⁶ See <<http://www.defenseforumfoundation.org/western-sahara/148-u-s-announces-groundbreaking-draft-resolution-for-human-rights.html>>

⁵⁷ OXFAM, «40 YEARS OF EXILE Sahrawi refugees abandoned by the international community?», *OXFAM BRIEFING PAPER* 2015.

The refugee camps have been changed gradually due to remittances, small local human development projects – particularly microcredits – and the development of a micro-economy through the gradual emergence of private socio-professional initiatives. This has contributed to the increase of inequalities between refugees and at the expense of community services⁵⁸. In addition, donors fatigue and political pressures have been translated in humanitarian aid shortcuts. For instance, the World Food Programme (WFP) basked food has been reduced to seven since January 2015 due to a reduction in the available funds. These cuts have direct effects in the health of refugees, particularly children, and women, and in general terms into food security and nutritional status. According to a study by the WFP, 7.6 percent of children under the age of five and females of child-bearing age (between 15-49 years of age) suffer from acute malnutrition. Health issues such as hypertension and diabetes are also very common⁵⁹.

In the next heading we will exam the attitude of the EU towards these human rights violations. We will try to determinate if its attitude has been coherent to its external policy and to the commitment of the EU institutions with the promotion of human rights.

4. THE ROLE OF THE EUROPEAN UNION FOR THE DEFENSE OF THE HUMAN RIGHTS IN THE WESTERN SAHARA. DOUBLE STANDARD POLICY?

As we have already mentioned, some authors have argued⁶⁰ that European institutions have carefully followed the situation of human rights in the Western Sahara, particularly the EP. This monitoring of the European Institutions has been expressed through the annual reports on human rights situation in the world, *ad hoc* resolutions and visiting missions of European deputies.

Since 1998, every year the EC elaborates reports on the worldwide situations of human rights and democracy. The situation of the Western Sahara has been captured in some of these reports⁶¹. The last one, known as the

⁵⁸ LÓPEZ BELLOSO, M., «El Desarrollo Humano Local en los campamentos de población refugiada saharai en Tinduf: desarrollo en el refugio», in DUBOIS, Alfonso et al. *Desarrollo Humano Local: de la teoría a la práctica*. Hegoa. UPV-EHU Bilbao, 2011.

⁵⁹ OXFAM, «40 YEARS OF EXILE...», *op. cit.*

⁶⁰ SOROETA LICERAS, J., «La posición de la Unión Europea», *op. cit.*, p. 842.

⁶¹ EUROPEAN PARLIAMENT, European Union's policy on the matter, 13th December, 2012. (2012/2145(INI)), par. 46. Resolution on the Annual Report on Human Rights in the World. 2004 and the EU's policy on the matter (2004/2151(INI)), 25 April 2005, par. 15.

«Tannok report» specifically expressed the concern of the EU on the situation of the human rights in the Western Sahara:

«Calls on the Commission and Member States – considering that the political solution to the Western Sahara conflict, reconciliation and the human rights situation are closely linked – to be more active in the resolution of the Western Sahara conflict, not only supporting the UN negotiations but also using its various external policy instruments (for example strengthening human rights monitoring and awareness among police and security forces, supporting democratic reforms, including decentralization, fighting discrimination in the region) to promote much needed confidence building between the conflict parties»⁶².

Apart from the annual reports on Human Rights and Democracy, the situation of human rights in Western Sahara has been dealt with in several EP Resolutions since the abovementioned first resolution in 1987⁶³. These texts adopted by the EP have captured the concern of the Institution on the situation of human rights in general terms but also on particular cases, as for example the Resolution on the release of the Saharan detainees in Western Sahara⁶⁴, the Resolution on the trial of eight Saharan demonstrators⁶⁵, or the Resolution on the Gdem Izik Camp⁶⁶.

Finally, the European Parliament arranged *in situ* visits to the territories and the refugee camps in 2002 and 2009. The reports of these visits also referred to the violations of human rights in the occupied territories. In addition, some deputies have arranged *in situ* visits in the framework of the intergroup on the Western Sahara of the EP and have been either expelled or they have not been allowed to enter the country:

«Regrets deeply the fact that on Wednesday, 6 March 2013 Morocco expelled a delegation of four Members of the European Parliament; notes that the aim of the delegation was to visit the territories of Western Sahara, to inquire about the situation of human rights and to meet with representatives of the MINURSO; regrets deeply the behaviour of the Moroccan authorities and demands that the Kingdom of Morocco permit free access

⁶² Report on the situation of human rights in the Sahel region (2013/2020(INI)) 8.10.13. Rapporteur: Charles Tannok.

⁶³ See: EUROPEAN PARLIAMENT: DO B2-1453 and 1474/87 (1987); B3-1758 and 1765/90 (12-11-1990); B3-1443 and 1467/92(29-10-1992); B3-0167, 0193, 0195 AND 0203/94 (10-02-1994); P6_TA-PROV(2005)0414 (26-10-05); A6-0086/2005 (05-04-2005); B7-0055/2013 (4-2-2013); P7_TA(2013)0431 (22-10-2013). A6-0086/2005. EUROPEAN PARLIAMENT: B-3 1443, 1452 and 1476/92.

⁶⁴ EUROPEAN PARLIAMENT: B-3 1443, 1452 and 1476/92.

⁶⁵ EUROPEAN PARLIAMENT: B4-0949, 0993 and 0996/95.

⁶⁶ EUROPEAN PARLIAMENT: B7-0680/2010.

and free movement in Western Sahara to independent observers, members of parliaments, to the press and to humanitarian organisations»⁶⁷.

This monitoring of the situation of human rights in the Western Sahara contrasts with the official positioning of the EU and the steps taken for the promotion of human rights in the territory. Taking into account that the EU has tried to promote democracy through partnership, commendation of attainments and incentives, European Institutions, and particularly some Member States, have been unwilling to constraint Morocco for structural political reforms⁶⁸, even though the interest of Morocco to strengthen the links with the EU provides the EU a privileged standing to use its leverage for the promotion of democracy and political engagement with human rights.

Taking into account the situation of human rights in Morocco as a whole, and in the occupied territories in particular, and the insertion of the «democratic clause» in the Association Agreement of 2007 and the section on human rights of the ENP, it is difficult to understand why Morocco has not been sanctioned⁶⁹.

Since 1992, the so-called «democratic clause» is indispensable in the agreements between the EU and third countries, unless the agreement is sectorial or focused in specific areas, as for instance, Fisheries Agreements⁷⁰. The «democratic clause» is usually structured in two parts: the first part outlining the significance and the approach of human rights in EU policy (relevance clause); and the second, the sunset clause, which sets the conditions for the agreement suspension.

As we have mentioned, almost all the EU agreements with third countries include this «democratic clause» and in many cases with the same wording. However, the application of this clause has been different. In some cases, as Liberia, Zimbabwe or Guinea, the worsening human rights situation meant the application of sanctions or even the suspension of the agreement. However, in cases as the Moroccan or the EU-Israel Trade Agreement, the situation of human rights had no consequences for the application of the agreements.

Geopolitical and economic considerations underlying the application of the «democratic clause» led according to ÚBEDA DE TORRES to the above-

⁶⁷ Report on the situation of human rights in the Sahel region (2013/2020(INI)) 8.10.13. Rapporteur: Charles Tannok, par. 107. Also see: El País, 7/11/2010; El Diario, 24/3/2014.

⁶⁸ KAUSCH, K., «How serious...», *op. cit.*

⁶⁹ BALBONI, M. *Paper presented at the Conference organised...*, *op. cit.*

⁷⁰ NIEDRIST, G., «Las cláusulas de derechos humanos en los tratados de libre comercio de la Unión Europea», *Anuario mexicano de derecho internacional*, 2011, vol. 11, p. 472.

mentioned «double standard policy»⁷¹. We argue that this «double standard» applies not only to different application of the clause, but also to different consideration of the human rights violations, meaning stronger commitment to the protection and promotion of civil and political rights than to economic, social, cultural rights.

Even though the engagement of the EU in the protection of the human rights of the Sahrawi people has been low, and had no implications for the agreements and partnership between the EU and Morocco, in our opinion EU has expressed stronger concern on the situation of civil and political rights.

EP reports and ad hoc missions' reports have been focused on human rights violations such as arbitrary detention, torture, enforced disappearance and the right of association:

«Having regards to the events in Assa (Southern Morocco) and Smara and El aaiun (Western Sahara), where Saharan men and women held peaceful demonstrations between 27 September and 15 October 1992, asserting their right of self-determination and calling for an end of the state of emergency.

Having regard to the brutal action by the Moroccan police in violently putting down the demonstrations and injuring, arresting and abducting large number of people.

Concerned about the further fate of the detainees and of those taken away to unknown destinations, whose names are known from a long list, and worried that events may escalate further»⁷².

«Expresses deep concern at the recent report from the UNSR on torture, who found evidence that Moroccan officials have detained individuals on political grounds, inflicted torture and rape on Sahrawi inmates, kidnapped and abandoned protesters in the desert to intimidate them, and deliberately and frequently targeted pro-independence advocates, including in their homes; notes further widespread allegations of forced disappearances and unfair trials...»⁷³.

«deeply concerned at the latest reports by Amnesty International and the World Organisation Against Torture regarding serious human rights violations by Morocco against the Sahrawi people,

Whereas the investigations carried out by the Equity and Reconciliation Commission regarding the people who have died in illegal detention centres have led to the discovery of the graves of 57 victims of forcible 'disappearance', 43 of them Sahrawis,

⁷¹ ÚBEDA DE TORRES, A., «La evolución...», *op. cit.*, p 76.

⁷² Resolution on the release of the Saharan detainees in Western Sahara. Resolution B-1443, 1452 and 1476/92, 29 October 1992.

⁷³ EUROPEAN PARLIAMENT, DRAFT REPORT on the situation of human rights in the Sahel region (2013/2020(INI)). 2013/2020(INI). 21/5/2013.

Welcomes the release by the Polisario Front of all Moroccan prisoners of war; calls on the Moroccan authorities to immediately release the human rights supporters, Mrs Aminattou Haidar, Mr Ali Salem Tamek and 35 other Sahrawi political prisoners, and to shed light on the fate of more than 500 missing Sahrawis, including those who disappeared during military campaigns»⁷⁴.

Norbert Neuser: «The situation of the political prisoners is getting worrisome, after five weeks of hunger strike. Morocco has to act now: either secure a fair civilian trial or set them free! We cannot accept this endless illegal detention by such a close neighbour to the EU»⁷⁵.

Moreover, there have been specific resolutions of the EP on the situation of the political detainees or the military trials to civilians:

«particularly shocked at the sentencing by a military court of eight Saharan students arrested during a demonstration at El Ayoun on 11 May 1995 to prison terms of 8 to 15 years, reduced to one year by King Hassan II,

Whereas several dozen arrests were made by the Moroccan police during the demonstration,

Whereas the recent amnesty granted to political prisoners did not include any Saharans»⁷⁶.

The EU has also followed the development of Aminetu Haidar's hunger strike in 2009 (PE432.839V01-00/ B7-0255/2009) and urged the Spanish and Moroccan government to find a solution to Haidar's situation. Nevertheless, the EU understood that the situation was a bilateral problem and its intervention was merely declarative⁷⁷. After her hunger strike she was again nominated to the Sakharov prize by some Euro deputies in 2010, but it was finally awarded to Guillermo Fariñas.

In 2014, Morocco hosted in Marrakech the II World Human Rights Forum. This forum was very controversial, as the foremost human rights NGO in the country, and many international organizations refused to participate claiming that the government intended to present false progresses in human rights issues and that the organizing process coincided with a state policy of muzzling civil liberties.

⁷⁴ EUROPEAN PARLIAMENT, Resolution on human rights in Western Sahara. P6_TA (2005)0414. 26 October 2005.

⁷⁵ «European Parliamentarians demand release WS political prisoners». See: <http://www.westelijkesahara.org/a109x1424>.

⁷⁶ Resolution on the trial of eight Saharan demonstrators in Morocco. B4-0949, 0970, 0993 and 0996/95.

⁷⁷ «The Commissioner for External Relations of the European Union (EU), Benita Ferrero-Waldner, today expressed her confidence that Spain and Morocco reach a «compromise political or humanitarian» solution and explained that the Community body will not intervene in the conflict because it is a bilateral issue». El País, 7/12/2009.

It seems clear that the civil and political rights situation is worrying. By way of example, trials do not fulfill international procedural requirements⁷⁸, harassment to human rights activists persists⁷⁹, and freedom of association is not real, as many human rights organizations, including Sahrawi human rights associations as ASVDH or CODESA, are still unregistered and unofficial⁸⁰. Consequently, the situation of civil and political rights has been recently acknowledged by the EP⁸¹, and the EU has strengthened the support to democracy and human rights in Morocco through EuropAid⁸².

Nevertheless, the situation of the economic, social and cultural rights is also upsetting. Moreover, the violation of the right of Sahrawi people to their natural resources under the Fisheries and Agricultural Agreement shows the little engagement of the EU with the economic, social and cultural rights. As we have already mentioned, sectorial agreements do not include «democratic clauses»⁸³.

However, the Legal Service of the EP in a legal opinion on the request of the EP about the EU-Morocco Agricultural Agreement clearly stated that:

«However, the Legal Service lacks information whether and how the proposed Agreement will be applied to the territories of Western Sahara

⁷⁸ Human Rights Watch Report: «‘Just Sign Here’: Unfair Trials Based on Confessions to the Police in Morocco», examined five trials between 2009 and 2013 of a total of 77 people – including protesters seeking reform, Western Sahara activists, and persons accused of plotting terrorism. Available at: <https://www.hrw.org/report/2013/06/21/just-sign-here/unfair-trials-based-confessions-police-morocco>

⁷⁹ Amnesty International has called on the Moroccan authorities to end the ongoing harassment and intimidation of Sahrawi activists: MDE 29/003/2007 (Public) News Service No: 024. 5/02/2007.

⁸⁰ On June 21st CODESA issued a press release about the false information provided on April the 22nd about its legalization. The difficulties on the regularization of human rights organizations was also reported by AI: <https://www.amnesty.org/es/countries/middle-east-and-north-africa/morocco/report-morocco/>

⁸¹ In a press interview to the Argelian press Service in Paris on February 25th 2013 in the framework of a meeting of the IPeMed Steering Committee, Alexandre Stutzmann, diplomatic advisor of EP President stated that: «A raíz de las distintas misiones llevadas a cabo en el territorio del Sáhara Occidental, la evidencia recogida por el Parlamento Europeo (PE), muestra que los derechos humanos fundamentales del pueblo saharauí son violados», Stutzmann also highlighted that «importante para esta institución europea que «el derecho, las libertades individuales y la dignidad de todas las personas sean respetados» por Marruecos en el Sáhara Occidental». Available at: <http://www.sprasad.info/es/content/los-derechos-humanos-son-violados-en-el-s%C3%A9hara-occidental-parlamento-europeo> date of Access 25th January 2016.

⁸² InstrW3 EuropeAid/134297/L/ACT/MA, 10/05/2013.

⁸³ NIEDRIST, G., «Las cláusulas», *op. cit.*, p. 472.

and how it will actually benefit local people. It also lacks information whether the further liberalization of those goods is in accordance with the wishes and interests of the people of Western Sahara. Under these circumstances, it seems appropriate to clarify these questions with the Commission before taking a position on the consent to the conclusion of the proposed Agreement. If those questions cannot be answered in the affirmative, then it can be argued that by concluding the Agreement, the European Union is infringing international law» (n.º 30).

«In order to be in conformity with international law given the special status of Western Sahara, the geographical indications originating in the Western Sahara must be fully respected by the future agreement (if it will be applied to the territories of Western Sahara). Indeed, geographical indications can protect and preserve intellectual property related to traditional cultures, geographical diversity and production methods» (n.º 35)⁸⁴.

These arguments were also at the Legal opinion on the Fisheries Agreement in 2009⁸⁵:

«Following a series of parliamentary questions to the Commission it appears that EU-flagged vessels have fished in the waters off Western Sahara. Not only this can be deducted from the data provided by the Member States to the Commission pursuant to their obligation established by Community Legislation on control but also it has been explicitly acknowledged in several Commissions Declarations»

Being aware of this legal framework, the POLISARIO Front appealed to the European Court of Justice claiming the illegality of the agreement, and it is must be noted that the Legal Service opinion has not been used neither by the EC, nor by the European Council in their allegations to the agreement⁸⁶. In a historic judgment, the European Court of Justice set aside the free trade agreement between the European Union and Morocco on 10th December 2015, in coincidence with the International day of Human Rights⁸⁷. The judgment is a milestone for two main reasons. On the first hand, because it recognized that, even though the Council had wide discretion for the conclusion of agreements with third countries, it must guarantee that the EU is not at the risk of indirectly encouraging human

⁸⁴ Paragraphs published by WSHRW at: <www.wshrw.org/exclusivael-servicio-juridico-del-parlamento-europeo-considera-ilegal-el-acuerdo-agricola-ue-marruecos/>.

⁸⁵ SJ-0269/09 1-7-2009.

⁸⁶ Appeal filed by the POLISARIO Front the 19th of November 2012 – T-512/12.2013/C 55/26.

⁸⁷ Judgement available at: <<http://curia.europa.eu/juris/document/document.jsf?text=&docid=172870&pageIndex=0&doclang=FR&mode=lst&dir=&occ=first&part=1&cid=164110>>

rights violations or even benefiting from such violations. On the other hand, the Judgment consolidated the legal personality of the POLISARIO Front, considering the case admissible.

This judgment is still very recent and it will be likely appealed by the EU, but in any case outlined the red line for the respect of human rights.

Besides the exploitation of fisheries and agriculture, Morocco violates the social rights of Sahrawi workers, hindering their access to public positions and hiring them under discriminatory labour conditions⁸⁸ and limiting the access to land and housing. Another expression of the socio-laboral rights constraint was the so called «Hassan Pups», a programme that displaced Sahrawi youngs from Saharan cities to Moroccan cities claiming laboral reasons⁸⁹.

In fact, all these socio economic demands were at the roots of the settlement of the Gdem Izik Camp in 2010. However, only when the political claim for independence was addressed, the International Community drove its attention to the situation, leaving social demands in the background.

In addition to this, Sahrawi culture is continuously violated: *hassani* language is forbidden at schools, traditional costumes as well⁹⁰ and Cultural Festivals and Forums are instrumentalized as other expression of occupation.

The above mentioned Tannok Report mentioned subtly the violations of cultural rights:

«(...)recalls the findings of the UN Independent Expert on cultural rights that the Moroccan authorities suppress certain aspects of Sahrawi culture; repeats the UN Independent Expert's call to overturn such measures and to promote full cultural diversity; notes positively, in this connection, the provisions on respect for cultural rights that have been included in the new Moroccan constitution; welcomes the setting-up of a dedicated Sahrawi television station; encourages strongly the full implementation of these provisions (...)» (parr. 106).

The report referred by Tannok was elaborated by Farida Sahhed, independent expert on cultural rights that expressed many violations of Sahrawi social and cultural rights such the difficult Access to workplace (parr. 72), difficulties for traditions transmissions due to families separation (parr.

⁸⁸ Sahrawi phosphates workers have organized many peaceful demonstrations asking for better economic and social working conditions. For example on May the 8th 2013 in El Aaiun. «Morocco violates the social rights of phosphate workers». See: <<http://www.wshrw.org/en/marruecos-viola-los-derechos-sociales-de-los-trabajadores-del-fosfato/>> Date of access: 25th January 2016.

⁸⁹ BERISTAIN, C. and GONZALEZ HIDALGO, E., *El Oasis...*, op. cit., p. 160.

⁹⁰ *Idem.*, p. 168.

73), banning of traditional costumes (parr. 75), housing destruction (parr. 76) o historic heritage (parr. 79), obstacles to the Sahrawi naming (parr. 77), or difficulties of Sahrawi artist to participate in cultural events (parr. 80) (A/HRC/20/26/Add.2).

For their part, *in situ* mission reports mainly focus their interest on economic, social and cultural rights to the exploitation of natural resources, or the situation of the refugees.

When dealing with the refugee human rights the European Institutions also focused on some claims of detentions and tortures in the camps and on the provision of Humanitarian Aid to refugees:

«Emphasises the need for human rights in Western Sahara and in the Tindouf camps to be addressed, even without anticipating any final political settlement or expressing a view on such a settlement»⁹¹.

«Expresses concern about the poverty and lack of basic services in the Polisario Front-administered refugee camps near Tindouf, particularly with regard to nutrition, healthcare and access to potable water; welcomes the humanitarian assistance provided by the EU through ECHO to the refugees concerned; calls, nevertheless, for international actors to channel, co-ordinate and consolidate aid more effectively and, where appropriate, to increase the amount of aid in order to guarantee the stability of the humanitarian situation and help improve the conditions in the camps; echoes the recommendations of the UNSR on adequate housing that sufficient international funding be directed at the provision of housing, in the light of the hitherto poor availability thereof; notes, nevertheless, the functioning systems of governance in the camps and welcomes the active presence of civil society, with the strong participation of women within both; welcomes, furthermore, the social emphasis on education, in spite of scarce resources; notes, however, the lack of clear documentation about the precise number of inhabitants in the camps; calls upon the Polisario authorities, with the assistance of Algeria where appropriate, to conduct or facilitate regular censuses or formal registrations»⁹².

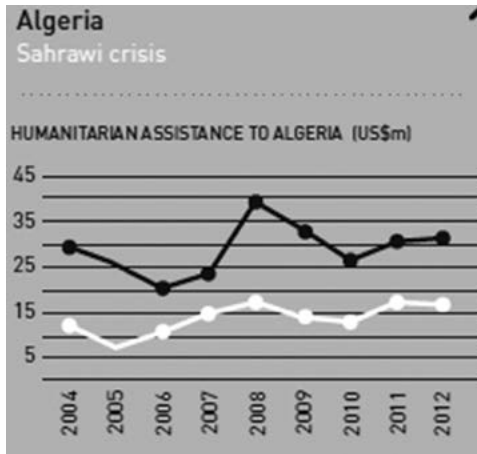
The EU is one of the largest donors to the Sahrawi refugees and since 1993 it has provided €213 million in humanitarian aid⁹³. However, even though the EC has highlighted the significance of neglected crises, and

⁹¹ Report on the situation of human rights in the Sahel region (2013/2020(INI)) 8.10.13. Rapporteur: Charles Tannok, par. 103.

⁹² *Ídem.*, par. 110.

⁹³ EUROPEAN COMMISSION. *Humanitarian Aid and civil protection. ALgeria Sahrawi refuge*. ECHO FACTSHEET, 2015.

ranked the Sahrawi refugee crisis in the first place out of ten at the Forgotten Crisis Assessment (FCA)⁹⁴, humanitarian flows remained constant⁹⁵.



Source: GLOBAL HUMANITARIAN ASSISTANCE REPORT 2014: 53.

The protracted refuge also has affected the human development progresses made in the camps regarding community service and education⁹⁶ as aid shortcuts have supposed a decrease in socio-cultural projects to foster refu-

⁹⁴ ECHO-Forgotten Crisis Assessment identifies «crises that have been overlooked or neglected by the international humanitarian community and/or the global media and which need special attention. The FCA attempts to identify crises characterised by very low media coverage, a lack of donor interest (as measured through aid per capita) and a weak political commitment to solve the crisis, resulting in an insufficient presence of humanitarian actors», Brussels, 4.12.2014 SWD(2014) 345 final. In the 2014 strategy, Sahrawi refugees were at 6/8 place, and also scored 11, the most severe level in 2013. According to the GLOBAL HUMANITARIAN ASSISTANCE REPORT only in 2005 this crisis was not prioritized in the index, meaning a considerable decrease in EU and international humanitarian assistance from the previous year. Despite this fact, the UN has never issued an appeal or strategic response plan (SRP) for Algeria (GLOBAL HUMANITARIAN ASSISTANCE REPORT 2014).

⁹⁵ ECHO Factsheet – ALGERIA – Sahrawi Refugees – September 2015: Available at: <http://ec.europa.eu/echo/files/aid/countries/factsheets/algeria_en.pdf> Date of access: 25th January 2016.

ECHO Factsheet Sahrawi Refugees – April 2013: Available at: <http://reliefweb.int/sites/reliefweb.int/files/resources/sahrawi_en_0.pdf> Date of access: 25th January 2016.

⁹⁶ DUBOIS MIGOYA, A., GURIDI ALDANONDO, L., LÓPEZ BELLOSÓ, M., «Local human development in crisis contexts», *International Journal of Social Economics*, 2011, vol. 38, no. 6, p. 16; LÓPEZ BELLOSÓ, M., MENDIA AZKUE, I., «Local Human Development in

gees livelihoods. Despite the acknowledgment of refugees 'vulnerability, this has not been translated in to an increase of the aid flows. On the contrary, many humanitarian organizations, as we have already stated, have alerted on the deterioration of the refugees situation⁹⁷.

5. CONCLUSIONS

Western Sahara conflict has not been placed at the forefront of the European Agenda. This little engagement or event passivity has been translated on the one hand, on the conflict stalemate, and on the other hand, on the systematic and permanent violations of Sahrawi people human rights.

After the decolonization, the economic and political instability of the North-African Region and the European interest on fighting terrorism, drug trafficking and migration have centered the EU policy on the region. This policy has led to multilateral and bilateral agreements with states of the region, especially with Morocco. The Moroccan state, considered as «moderate bridge» ally has been benefited through the ENP and the Advanced Status⁹⁸. As other European Cooperation agreements, these included the so called «democratic clause» that allows the suspension of the agreement if human rights, democracy or governance are threatened. However, even the own European Institution have expressed their concern on the violations of human rights in Morocco, and particularly, of the Sahrawi people, no action or consequence has been taken under this «democratic clause». On the contrary, relations between the EU and Morocco not only have consolidated, but also been reinforced through economic support to the promotion of democracy and human rights. The recent judgment of the European Court of Justice sets a turning point in the commercial relations between the EU and Morocco, but it is still to be defined if this legal decision will have real implications for the protection of human rights.

Despite some achievements in the promotion of human rights such as the Constitutional reform in 2011, or the creation of the ERC have been made, systematic violation of Sahrawi human rights persists and there is no global and coherent European stance concerning the Western Sahara conflict. Since the first resolution addressing the conflict in 1987, the European Policy towards the situation of the Sahrawi people answers to the humanitarian concern and isolated answers to gross violations of human rights. Abovementioned strong political and economic interests with Morocco take precedence to the defense of the Sahrawi people's rights.

contexts of permanent crisis: women's experiences in the Western Sahara», *JAMBA: Journal of Disaster Risk Studies*, 2009, vol. 2, no. 3, p. 168.

⁹⁷ OXFAM, «40 YEARS OF EXILE...», *op. cit.*

⁹⁸ OPGENHAFFEN, V. and FREEMAN, M., *Transitional Justice...*, *op. cit.*

Even though, as we have pointed out, the EU, especially through the EP, has addressed European concern on the Sahrawi people's human rights, this engagement has been merely declarative and mainly focused on political and civil rights of the Sahrawi living in the occupied territories or humanitarian flows. Moreover, EU has ignored the continuous violations of economic, social and cultural rights. On the one hand, little attention has been paid in the EU reports or resolutions on these kinds of human rights violations. In our opinion this is due mainly to two specific reasons. On the one hand, the promotion of the economic rights of the Sahrawi people is linked to the exploitation of their natural resources. However, as we have stated, the EU not only has ignored the international law protection to Sahrawi natural resources, but consciously violates it by signing fisheries, agricultural and trade agreements, despite the legal opinions of the European legal service and the UN legal assessor, Hans Corell, as it has been pointed out in the European Court of Justice Judgment.

On the other hand, the promotion of social and cultural rights is linked to the Sahrawi identity and claims for self-determination. Addressing the systematic oppression of the Sahrawi language, culture and traditions would mean the acknowledgment of the existence of the Sahrawi identity. This recognition would for sure disturb the Moroccan ally, who persists denying the existence of the Sahrawi identity.

For all this, the stance of the EU institutions, even the EP, on the Sahrawi people human rights is lingering and limited to the situation of civil and political rights, in line with the Moroccan self-proclaimed promotion of human rights. Moreover, the promotion and defense of the Sahrawi people's civil and political rights is limited to tepid declarations and resolutions on enforced disappearance, arbitrary detention or torture but is not translated in an open critic to the Moroccan state. Consequently, no sanctions or consequences have been in the framework of the democratic clause. This «double standard policy» towards Morocco therefore shows a clear political incoherence in the promotion of human rights.

Regarding the situation of refugee population in Algeria, the engagement of the EU through the humanitarian flows provided by ECHO is limited to basic livelihoods and food supply. Despite admitting the refugees' vulnerability, ECHO has not increased the budget for the Sahrawi refugees, nor has promoted development projects to encourage Local Human Development of the protracted refugees. The European support to the families' exchange under the UNCR program has either been significant. This program is considered by the refugees as key to promote the social cohesion and traditions, as it helps to keep society in touch and maintain culture and tradition.

Therefore, in our opinion, the European stance in the Western Sahara should be reconsidered and reframed. The EU should engage actively, as in other struggles, in the conflict resolution. The EU, due to its special link to

Morocco could play a strategic role in the peace negotiations and the promotion of a fair agreement between the parties. In any case, the EU should link its cooperation agreements with Morocco to the promotion and respect of human rights. This promotion and defense should move from declarative and isolated statements to an active defense of Sahrawi people's human rights. Regardless, the promotion and protection of human rights cannot be limited or conditioned by economic and political interest of the European Institutions or member states. On the contrary, the EU should take the lead in a coherent and holistic defense of Sahrawi's human rights by, first, stopping the exploitation of natural resources; and second implementing the «democratic clause» of the cooperation agreements should the violation of human rights persist.

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TÍTULO: El papel de las instituciones europeas en la defensa de los derechos humanos en el Sahara Occidental

RESUMEN: la posición de la UE ante el conflicto del Sahara Occidental se ha caracterizado principalmente por: i) un posicionamiento mucho más tibio que en otros conflictos; ii) y por lo que se ha venido a denominar «la política del doble rasero», con una implicación distinta de las diferentes instituciones europeas, y con un posicionamiento desigual ante la negociación política de la salida al conflicto y la defensa de los derechos humanos. Se ha considerado que esta incoherencia se mantenía entre el posicionamiento político de las instituciones de la Unión, influidas por las presiones políticas de algunos de los actores implicados, como Francia y España; y por los intereses económicos de la UE, fundamentalmente relacionados con la explotación de los recursos naturales del territorio, mientras que parecía existir consenso sobre la apuesta clara de la UE por la defensa de los derechos humanos de la población saharauí. Sin embargo, este trabajo pretende demostrar que «el doble rasero» y la inconsistencia del posicionamiento de las instituciones europeas se ha trasladado incluso a la defensa de los derechos humanos. Así, mientras las instituciones europeas defienden los derechos civiles y políticos de la población saharauí en los Territorios Ocupados, además de denunciar la situación de precariedad que enfrenta la población de los campamentos de refugiados, ante la violación de los derechos económicos, sociales y culturales de la población saharauí los intereses económicos de varios Estados miembros de dichas instituciones se sobrepone a la defensa de los derechos humanos de pueblo saharauí. Este artículo tratará de demostrar esta incoherencia en la defensa de los derechos humanos de la

población saharauí a través del examen de documentación tal como: informes de misiones de observación in situ, informes sobre la situación de los derechos humanos, apoyo a activistas saharauís, análisis de los flujos de ayuda humanitaria a los campamentos de Tinduf; así como del análisis jurídico de los distintos acuerdos firmados entre la UE y Marruecos para la explotación de los recursos naturales del territorio que pertenece a un pueblo que aún se encuentra en proceso de descolonización.

PALABRAS CLAVE: Asamblea Parlamentaria, Consejo de Europa, Derechos Humanos, Sahara Occidental, Unión Europea.

ABSTRACT: The European Union's position on the Western Sahara conflict has been characterized on the one hand by a more tepid position than in other international conflicts; and on the other, by what has been referred to as a «double standard policy» of the EU, with different implications and a different stance of the European Institutions on the peace negotiation and on the defence of human rights. It has been considered that this incoherence was maintained between the political attitude of the European Institutions which was influenced by the political pressures of some actors involved, such as France or Spain, and EU economic interests, basically related to the exploitation of the natural resources of the territory. However, it was supposed to be a clearer and more coherent statement of the EU on the defence of the human rights of Sahrawi population. Nevertheless, this paper argues that this «double standard policy» and political incoherence has been even translated to the defence of human rights. Thus, while the European institutions clearly defend civil and political rights in the Occupied Territories and condemn the precarious conditions of the Sahrawi Refugees, European economic interests overwhelm the defence of the Sahrawi people's cultural, economic and social rights. This article will try to unveil this inconsistency in the defence of the rights of Sahrawi people through the analysis of documents such as: reports of the EU parliament, in situ missions, European Institutions' reports on the situation of Human Rights, support to Sahrawi activists, and European Humanitarian Aid flows; comparing them to legal/illegal agreements signed by the EU with Morocco for the exploitation of natural resources and the stance of the EU towards local NGOs and human rights associations.

KEY WORDS: European Institutions; Human Rights, Western Sahara, Policy Coherence.

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