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OPINION OF THE LEGAL SERVICE ^(*)

Subject : The currently negotiated Partnership Fisheries Agreement between the EC and the Kingdom of Morocco

- Compatibility with international Law

1. At its meeting on 19 January 2006, the Working Party on External Fisheries Policy asked the Council Legal Service for a written opinion on the following question:

Is the currently negotiated text of the Partnership Fisheries Agreement between the European Community and the Kingdom of Morocco that would allow Community vessels to fish in waters of the Western Sahara compatible with international Law?

I. Background

2. The previous Partnership Fisheries Agreement between the European Community and Morocco¹ which came into force on 1 December 1995 expired on 30 November 1999.

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¹ Council Regulation (EC) No 150/97 of 12 December 1996 on the conclusion of an Agreement on cooperation in the sea fisheries sector between the European Community and the Kingdom of Morocco and laying down provisions for its implementation (OJ L 030, 31/01/1997, p. 1).

After long negotiations to conclude a new agreement with Morocco, the European Community recognized on March 2001 that an Agreement could not be reached. Following the suspension of the negotiations a fund scheme for the restructuring of the Community fleet which had operated under the previous fisheries agreement and was forced to stop its fishing activities (basically located in Spain and Portugal) was approved².

3. The Commission resumed its negotiations with Morocco in the first half of 2005 on the basis of the mandate granted by the Council on 15 October 1999 for the previous set of negotiations; the Council updated the negotiating Directives on 18 July 2005. The Commission initialled with Morocco on 25 July 2005 a Fisheries Partnership Agreement (hereinafter referred to as the Agreement) together with a Protocol and Annex setting out the technical and financial conditions governing the fishing activities of Community vessels.
4. The Agreement, as currently drafted, provides Community fishermen with fishing opportunities in Moroccan fishing zones for a period of four years from its entry into force in exchange for a financial contribution of 144.400.000 € that the Community commits to grant to Morocco. As has been the practice under previous fisheries agreements with Morocco, Community vessels would have access to fishing stocks situated in Western Sahara waters, although the agreement does not expressly refer to Western Sahara waters.
5. At present, the sovereignty of the territory and maritime waters of Western Sahara is contested between the Kingdom of Morocco (which largely controls this region, including the almost totality of the coast areas, and claims full sovereignty over the territory and maritime waters of Western Sahara) and the Frente Popular para la Liberación de Saguia el-Hamra y de Río de Oro (Frente Polisario) a movement which claims the full independence and right to self-determination of Western Sahara.

² Council Regulation (EC) No 2561/2001 of 17 December 2001 aiming to promote the conversion of fishing vessels and of fishermen that were, up to 1999, dependent on the fishing agreement with Morocco (OJ L 344, 28/12/2001, p. 0017.).

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