

Fish before peace

- *The EU's controversial fisheries in occupied Western Sahara*

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"The financial aspect is not necessarily the most important aspect of this agreement. The political aspect is just as important".¹

In one short statement, Morocco's fisheries minister summarised the entire problem of the EU's former fish agreement with Morocco. The year was 2006, and the debates had been running high in European institutions on the upcoming EU-Moroccan fisheries agreement. A new pact, in which the EU would pay money to the Moroccan government to fish in Western Sahara waters, was just about to be concluded after months of dispute.

The statement underlined the problem with the entire deal: Morocco was about to reel in a large and controversial political catch. As a leading beneficiary of the EU's Neighbourhood Policy, Morocco has been advantaged with a number of trade deals with the EU; some of these deals directly affect the territory of Western Sahara. Morocco naturally has an agenda in these kinds of agreements. By attracting foreign companies and governments to sign accords for the management of the natural resources of the territory, Morocco normalizes its long-standing illegal occupation of Western Sahara, and creates an impression of international support for its presence in the Saharawi territory.

"International agreements which do not exclude 'the Moroccan Sahara' from their application, prove that the area is Moroccan", the Moroccan Minister of Communication asserted in an interview years later.²

However, on one occasion, this project of including Western Sahara as part of the Kingdom through EU agreements crumbled. In a historical decision 14 December 2011, the European Parliament rejected the fisheries in the territory. It was one of the very unique occasions in the history of the EU that a trade deal has been blocked by the lawmakers, and the only time it has happened to a fisheries agreement. From a political victory in 2006, the Moroccans five years later had suffered a bitter loss on the same deal.

This article outlines the saga behind the blocking of the EU-Morocco fisheries agreement in 2011, and looks at the arguments used by its supporters. For several years did the defenders of the EU fisheries in Western Sahara argue that the fisheries accord was not a political act, but one of mere fishing. They blamed the opponents for taking advantage of a simple trade agreement for political agenda.

But as the agreement was up for continuation in 2011, all arguments to support the continued fisheries had been undermined by the EU's own investigations. The same supporters that had stressed the apolitical nature of fisheries, only had political arguments left to defend continued fisheries. In the end, it seemed all to be about politics, as the Moroccan government had admitted itself. Even the documented environmental destruction and multi-million Euro losses for the union turned unimportant, as long as its Spanish fleet were kept busy.

The EU fisheries had to continue since it was politically important for Morocco, they said.

EU interest with Morocco

Due to its occupation of Western Sahara, Morocco is the only African country that is not part of the African Union. Yet, it is the African state with the closest ties to the EU. Strategic reasons why the EU needs to maintain the goodwill of the Moroccan government are numerous: Migration and drug control across the Gibraltar Strait, intelligence exchange on terrorism, overlapping maritime and land claims with its member state Spain, just to name a few.

According to figures from the European Commission, the EU is Morocco's biggest trading partner, by far, accounting for around 50 percent of the country's total trade. The trade in goods between the EU and Morocco is ever increasing, and was in 2013 at more than 27 billion Euros.³ Through the trade cooperation, the European Community has entered into several agreements with its neighbouring country in the south west, that in practice cover natural resources in Western Sahara.

It appears that two EU states in general have the definition power over the EU policy on the Western Sahara conflict: Morocco's neighbor country Spain and the Kingdom's long term ally, France. The remaining 26 states in the Union appear not to invest much political capital, if any, in the dispute, in order not to upset Madrid and Paris.

"We know what international law guides us to do, but in this matter we follow Spain", stated a representative of one of the country delegations to Brussels regarding the EU fisheries in Western Sahara⁴. There are some noble exceptions, where governments stress the legitimate rights of the Saharawi people, most of all governments in Northern Europe. But they seldom go in direct confrontation with the Spanish-French duo. Also the European Parliament, consisting of the democratically elected representatives from the 28 EU states, repeatedly issue statements about the human rights in Western Sahara. The Parliament for instance "expresses its concern at the continued violation of human rights in Western Sahara; calls for the protection of the fundamental rights of the people of Western Sahara, including freedom of association, freedom of expression and the right to demonstrate; demands the release of all Sahrawi political prisoners".⁵

The position of the European Parliament is also supported by key documents by the UN Secretariat and leading human rights organisations. The US organization Freedom House, for instance, rates Western Sahara at the bottom of ratings on political freedom –together with states such as North Korea. However, on the other end of the scale, one would find players within the EU system with a completely different view.

At key moments in Western Sahara conflict, the EU ambassadors to Morocco have actively pursued the Moroccan position on diverting human rights abuses in Western Sahara, to focus on spreading Moroccan versions of the turn of events.⁶ The former ambassador is even quoted stating that «Morocco and the EU share the same values of democracy and freedom", at a seminar of media freedom in Rabat.⁷

This illustrates a key part of the dynamics of the EU processes and what happened during the battle of the fisheries agreement. Sometimes the European Parliament and the Commission could take highly differing views. Sometimes, they could even be in direct conflict with one another.

Integrating into the European Market

It is in the overall framework of political cooperation between Morocco and the EU that the fisheries agreement must be viewed.

At the very same day in December 2011 as the European Parliament wrote history by rejecting the fisheries agreement, ironically, the Council of Ministers mandated the Commission to negotiate a so-called Deep and Comprehensive Free Trade Agreement (DCFTA).⁸ The DCFTA negotiations formally started 16 months later.⁹ The main objective of this agreement is to facilitate Morocco's gradual alignment with the EU single market.

"These negotiations show the EU's strong commitment to further developing its trade and investment ties with Southern Mediterranean partners who are committed to political and economic reforms", stated the EU Trade Commissioner.¹⁰

But there was a hitch. As always, as the EU is reluctant to properly exclude the occupied parts of Western Sahara from its trade deals with Morocco. Through the DCFTA talks, which will probably not be concluded for a few years, Morocco will negotiate the agreement with the EU as if the Moroccan-controlled parts of Western Sahara were part of the Kingdom.

31 Saharawi civil society organisations from occupied Western Sahara and the Saharawi refugee camps in Algeria have appealed to the European Commission to exclude their country from the DCFTA-talks. The European Commission has not taken their wish into account, and has not consulted them so far in the process.¹¹

The DCFTA talks illustrate how Western Sahara is the elephant in the room during EU-Moroccan negotiations. It is the topic seldom raised, but all institutions know should be. Overall, the EU tends to follow a say-as-little-as-possible approach.

"The EU confirms its support to the UN Secretary General and his Personal Envoy in their efforts to reach a just, lasting and mutually acceptable political solution", stated the EU's spokesperson on human rights as the situation in Western Sahara was at its most intense since the ceasefire in 2010¹². The quote is not untypical to the EU's approach to the conflict. To comparison, a general UN Security Council resolution would normally state exactly the same, but then ending with the formulation "... which will provide for the self-determination of the people of Western Sahara."¹³ The omission is often made by the EU, cutting through the entire EU approach to the conflict and its trade relations with Morocco. It illustrates how Saharawi people is not taken into account by the EU. When dealing with Saharawi natural resources, the EU negotiates with Rabat, and lends a deaf ear to the Saharawi protests.

Overgrown fishing Fleet

The EU struggles with a massive overcapacity in its fishing fleet. In short, there are far too many fishermen and fishing vessels for the always decreasing fish stocks available in European waters. 88 percent of the EU's own waters are overfished. The main problem is Spain: 80 percent of the EU fishing vessels, and 65 percent of the EU fishermen are Spanish. To cope with the problem of sleeping fleet and unemployed fishermen, the EU enters into so-called Fisheries Partnership Agreements, or "FPAs", through which the Union pays African and Pacific governments to issue

fishing licences for the EU vessels in their waters. The model is not without controversy. The fleet often overuses the fish stocks where it operates, and enters in conflict with the traditional small-scale, often poor, fishing communities operating from the coast. Some of the governments that sign fisheries deals with the EU are known to be un-democratic or corrupt, and with limited resources to monitor the visiting European fleet. In Western Sahara the problem is that the EU even inked the agreement with the wrong government: its occupying power.

Spanish fishermen have been fishing in the waters offshore Western Sahara for centuries. As the territory was to be decolonized from Spain in the autumn of 1975, the weak and collapsing Franco regime signed the Madrid Accords with Morocco and Mauritania, allowing the two neighbour countries to invade the territory. The deal was in direct conflict with the obligation Spain had to decolonize the territory. In return, Spain would be allowed to keep its fishing rights and partly its ownership in the phosphate industry in Western Sahara. In that way, the massively overgrown fishing fleet that the Franco regime had built could maintain its unsustainable fisheries even after it unilaterally, and thus illegally, renounced from its colonial obligations.

While the Saharawi people was left on its own to escape to refugee camps in Algeria or to confront the occupiers at home, the fish stocks and phosphate deposits of the territory became part of the package that Spain gained from ignoring its obligation to decolonize Western Sahara properly. The Spanish tradition of fishing in Western Sahara after 1975 is thus part of the explanation as to why Western Sahara is not decolonized in the first place. It is a profit that Spain gained from allowing Morocco to occupy the territory in violation of the rights of the people that inhabited in the former Spanish province.

In 1986, Spain joined the Union. From then on it would be the EU that negotiated foreign fisheries agreements with Morocco on Spain's behalf. From 1988, the EU for the first time signed such an agreement with Morocco, allowing for 800 licences annually for Spanish and Portuguese fishermen. No ceiling on catches was introduced, and Morocco was paid 282 million Euros for the deal. A new agreement was signed in 1992, the same year that the referendum in Western Sahara was supposed to have taken place. The agreement was even more lucrative for Morocco: the Moroccan government was paid 310 million Euros, for an activity almost exclusively taking place in Western Sahara waters. In 1995, the latter agreement was redefined and prolonged, for a payment of 500 million Euros, and in turn terminated by Morocco in 1999. By then, the fish stocks in Western Sahara were about to collapse.¹⁴

The halt of fisheries offshore Western Sahara at the turn of the century struck hard on the Spanish fishing communities. "In Andalusia, more than 200 vessels have been affected and a total of 151 vessels remain tied up pending an improvement in fishing relations between Morocco and the EU. As a result of this crisis, business has dropped by half in the markets of the ports of Almería, Barbate, Huelva, Malaga and Algeciras", stated a Spanish Member of European Parliament (MEP) in the autumn of 2004.

"Would the Commission be prepared to make a fresh attempt at rapprochement with Morocco with the aim of facilitating cooperation on fishing-related matters?", she asked.¹⁵

In 2005, the Commission responded to the pressure from Spain, and commenced talks for yet another agreement, which, as we shall see, entered into force in 2007.¹⁶ This was the first time the

EU entered into such an agreement after the UN legal office had issued its 2002 legal opinion on oil exploration in Western Sahara. The principles outlined in the UN opinion were clear, even for natural resources other than oil: if the people of Western Sahara did not benefit from it, and if they did not consent, such operation would be in violation of international law. So did the Saharawi people consent? Were they to benefit from an agreement that the EU signed with the government that oppress them?

Selective reading

We will perhaps never know how the legal staff of the European Commission and Council actually argued in the defense for the EU fisheries agreement that the Spanish fisheries industry had pushed for. The opinions that the two legal offices made have to this date been kept confidential. Yet, the statements given by the Commission when confronted in public, reveals a clear misrepresentation of UN documents and international law that in more spotlighted conflict situations would have created headlines in themselves. But not in the matter of the little known issue of Western Sahara.

In the year up until the adoption of the agreement, the Commission and key governments went to great lengths to obfuscate the whereabouts of the future fisheries, to lay the responsibility on Morocco and to misrepresent the legal opinion of the UN.

The EU-Moroccan fisheries agreement of 2007-2011 did not make any efforts to specify that Western Sahara is excluded from the agreement with Morocco. Actually, it did not mention Western Sahara at all. Instead, the agreement allowed for EU fisheries under Morocco's "sovereignty and jurisdiction". It was clear for everyone that the fisheries would happen in Western Sahara, but the defenders went to great lengths to avoid saying it.

The only legal reference that the European Commission used to defend its agreement was the mentioned UN opinion from 2002, as well as its own, internal, confidential analysis.

The UN legal opinion was written by the then UN secretary-general for legal affairs, Ambassador Hans Corell, to the Security Council in 2002. The analysis concluded that natural resource activity in Western Sahara is illegal if it was "to proceed in disregard of the interests and wishes of the people of Western Sahara".

However, the EU consistently misrepresented the report. Never did the Commission refer to the final conclusion of the legal opinion, only segments inside which do not reflect the conclusion. Never did the Commission consult the Saharawi people over the agreement, and never did the Commission even refer to the wishes of the Saharawis regarding the agreement.

More than 100 UN resolutions have established that the people of Western Sahara have the right to self-determination. This right applies also to the resources of the territory. No states in the world recognise the Moroccan sovereignty over Western Sahara.

Still, the Saharawi's wishes were simply ignored every time the Commission was confronted with the legality of the agreement. Each time, the UN legal opinion was misrepresented:

"Regarding the compliance of the current Agreement with international law, and the legal opinion of the European Parliament [...], we would like to reiterate that in his letter of 2002, Mr. Corell,

concluded that (economic) activities in a Non-Self-Governing Territory by an administering Power are illegal "only if conducted in disregard of the needs and interests of the people of that Territory".¹⁷

That is false. The opinion does not conclude in this way. By referring to other parts of the text than the final conclusion, the EU gave the image that it can decide, on their behalf, what it is that the Saharawis are wishing. It also stresses something that the EU mentions repeatedly: that Morocco is the de facto administering power over the territory. "So, the Commission proposal is in conformity with the legal opinion of the United Nations issued in January 2002," stated Commissioner Borg in 2006 argued.¹⁸ This is in fact *the contrary* to what is stated in the UN legal opinion. The UN legal opinion clearly states Western Sahara has no such administering Power.¹⁹ The opinion was made by analogy, *as if* Western Sahara had had one.

Another way of diluting Corell's conclusion was by inverting the meaning into a double negation: "[...] according to the legal adviser to the Secretary-General of the United Nations (12 February 2002) [...], activities related to natural resources undertaken by an administering power in a non-self-governing territory are not illegal so long as they are not undertaken in disregard of the needs, interests and benefits of the people of that territory", stated the European Commissioner for Fisheries and Maritime Affairs.²⁰

The Commission had spent two entire years in preparing the agreement, and defended the text fiercely in the debates. The statements were consistently vague. Never did they want to state that the fishing would take place in Western Sahara.

"According to the provisions of the agreement, it is up to the Moroccan authorities as the contracting party concerned to define the fishing zones on the basis of which fishing licences will be issued", Commissioner Borg stated just before the vote in the European Parliament plenary session, 15 May 2006.²¹

The opinion of the European Council was not discussed as much as the one from the Commission. Seven years after it was written, in July 2013, the Council stated it could not disclose it. The argument? Due to its "great political sensitivity".²²

Also the European Parliament undertook a legal analysis. But unlike the legal opinions of the European Commission and Council, the one from the Parliament was published. The report warned of the illegality of the agreement. However, it was hard for the Parliament's legal staff to draw a conclusion, since the proposed agreement did not actually specify that fishing would take place in Western Sahara. If that were to happen, however, and if Morocco did not respect the rights of the Saharawis, it would be illegal, the Parliament legal service stated:

"[...] The text of the Agreement is not sufficiently clear as to its territorial area of application", the legal opinion from 2006 noted. "This does not mean that the agreement is, as such, contrary to the principles of international law. At this stage, it cannot be prejudged that Morocco will not comply with its obligations under international law vis-à-vis the people of Western Sahara. It depends on how the agreement will be implemented. [...] In case the Moroccan authorities disregard manifestly their obligations under international law vis-à-vis the people of Western Sahara, the Community could eventually enter into bilateral consultations with a view to suspending the agreement," the legal experts wrote.²³

The debates ran high in the Parliament. While parliamentarians objected to the Commission's fact blurring and likely inclusion of Western Sahara, underlining that the agreement would violate international law, the Commission itself worked intensively to calm down the opposition.

"[T]he Commission thoroughly evaluated the political, legal and economic implications of an eventual agreement. In this case, as in others, the Commission is taking care to avoid a situation where the conclusion of new agreements in the field of fisheries could become a factor in international disputes or conflicts", the Commissioner stated²⁴.

The sector that had pushed for the agreement, mostly the Spanish parliamentarians, praised the Commissioner for the negotiating of the agreement.

"I would like to express my gratitude to a section of the population who I represent", stated a Spanish parliamentarian on the Commission's work. "I am talking about the population of the Canary Islands, which also neighbours these waters, which has always fished in these waters and not, despite what some people have said, in a colonialist fashion. My great-grandfather signed an agreement with the population of the coast in order to fish there, on the basis of the principle of mutual interest. We had been fishing in those waters, we shall go back to fishing there, and I would like to thank the Commission for the effort it has made. I hope that this Parliament will approve this Agreement by a large majority, since it is very fair and very correct from the point of view of international law."²⁵

Other defenders said that the debate over the Saharawis people had nothing to do in such a forum.

"We believe that the Committee on Fisheries is not the place to resolve extremely important and complex international political problems", Spanish MEP Carmen Fraga said 15 May 2006.²⁶

She thanked her Spanish countryman that had prepared the dossier for the Plenary session, and the "balance he has achieved in relation to the political issues that have arisen".

The debate up until the vote in the Plenary session of the European Parliament was also used by pro-Moroccan parliamentarians to score political points, promoting rather absurd political statements in support of the Moroccan claims to the territory, in which legal references were even more twisted:

"I welcome this agreement, which is reasonable on two grounds", stated a French MEP who in the past had served as fiscal advisor of the Moroccan monarch.²⁷

"Firstly, it is reasonable as far as the fishery resources in the Moroccan provinces of Western Sahara are concerned. It is not the opinion of Parliament's legal service that counts, but that of the International Court of Justice. For centuries, Morocco has exercised a certain form of sovereignty over that territory. If Algeria wants an outlet into the Atlantic, that is its problem, but that is not a good enough reason to invent laws. It is also reasonable because it is good to retain the benefits derived from these agreements and to transfer them to the Saharan provinces of Morocco and to the people [...] we must take delight in the fact that we have concluded this reasonable and balanced agreement with Morocco. Let us not pick a quarrel with the Moroccans."²⁸

Wrapping up

The deal was eventually approved in 2006, and entered into force from 28 February 2007. The EU fleet would be given 114 licences, in return of a 36 million Euros annual payment to the Moroccan government. It meant a total package of 144 million Euros to fish – mostly in a territory that Morocco has never laid a maritime claim over.

The vagueness of the territorial scope led Sweden to vote against the agreement in the European Council, stating that "Western Sahara is not part of the territory of Morocco under international law". "How can the EU on the one hand support the United Nations resolution and not recognise the annexation of the Western Sahara and on the other hand have a fisheries agreement with Morocco that covers the occupied areas? We want to be a neutral part in solving this conflict", a Swedish official stated as the deal was up for vote.²⁹ Finland, Ireland and the Netherlands agreed with the Swedish position, but did not vote against the deal, opting instead to abstain, issuing their own statements. The remaining states endorsed the agreement in the Council. Several representatives of EU governments stated that in either case, if fisheries were in fact to take place in Western Sahara, Morocco would have to make sure that the benefits would go to the "local population" and could not prejudice how Morocco would comply or not.

But no specific reference whatsoever was made in the protocol to whom that local population was. Were they Moroccan or Saharawi?

In the end, Morocco had four years to deliver proof that the "local population" would benefit. As we should see later, what they coughed up was, mildly speaking, not really what the states had asked for.

"Please, friends of the Sahrawi people, tell the EU that they first help solve the Western Sahara conflict, then they can exploit our fish. The way they do it now will only make problems for us and for the UN peace process", stated Saharawi human rights activists from the occupied territories in a letter to the Parliamentarians the day before the vote.³⁰

A third of the parliamentarians voted against the Council's decision in a parliament vote on 15 May 2006. It was not enough for majority. And since the Parliament did not have decision making power, it would still have had no importance if the parliament had disagreed. The Council's decision would in either case have gone through.

The Commission still claimed they had everything covered. "I repeat that concerning Western Sahara the wording used in the agreement was formulated very carefully. I repeat that it neither defines nor prejudices the legal status of the waters concerned. Again, with regard to [...] the question as to whether Morocco can conclude agreements that concern the exploitation of the natural resources of Western Sahara, the United Nations legal adviser gives a clear answer," were Commissioner Borg's last words in European Parliament, before the Plenary vote.³¹

As the deal was sealed, and the fishing activity started, the critique would come from, probably, the highest authority possible.

Corell concerned

"I am afraid that Commissioner Borg has been ill advised", ambassador Hans Corell, then retired from his UN position, stated during a conference on international law in 2008.³²

The EU Commission's continuous misuse of the UN text had not passed unnoticed by the author. He saw it peculiar that the Commission was reading his text as if Morocco is a de facto administering power, and that the agreement "therefore" would be in conformity with the legal opinion. What Corell thought about the EU's use of his UN document deserves a generous quote:

"I must confess that I was quite taken aback when I learnt about this agreement. Without doubt, good relations between Europe and Morocco are of greatest importance. [...] But I am sure that it would have been possible to find a formulation that would have satisfied both parties while at the same time respecting the legal regime applicable in the waters off Western Sahara. Any jurisdiction over those waters is subject to the limitations that flow from the rules on self-determination.

It has been suggested that the legal opinion I delivered in 2002 has been involved by the European Commission in support of the Fisheries Partnership Agreement. I do not know if this is true. But if it is, I find it incomprehensible that the Commission could find any such support in the legal opinion, unless, of course, it has established that the people of Western Sahara had been consulted, had accepted the agreement, and the manner in which the profits from the activity were to benefit from them. However, an examination of the agreement leads to a different conclusion. [...] It is very difficult to identify the Saharawi in this enumeration. [...] In all the pages of the Agreement, there is not one word about the fact that Morocco's 'jurisdiction' is limited by the international rules of self-determination.

As a European, I feel embarrassed. Surely, one would expect Europe and the European Commission – most of all – to set an example by applying the highest possible international legal standards in matters of this nature. Under all circumstances, I would have thought that it was obvious that an agreement of this kind that does not make a distinction between the waters adjacent to Western Sahara, and the waters adjacent to the territory of Morocco, would violate international law."

Also other legal scholars concluded on the illegality of the agreement,³³ as did the government of Sweden.

The Legal Service of the European Parliament fell on the same conclusion as the former UN legal chief. In a new legal opinion from 2009, made public in 2010, the office did not find any proof that the Sahrawi have ever been consulted in relation to the fisheries agreement in Western Sahara, which had by then been in effect for more than two years.

"It is not demonstrated that the [...] financial contribution [to Morocco] is used for the benefit of the people of Western Sahara. Yet, compliance with international law requires that economic activities related to the natural resources of a Non-Self-Governing Territory are carried out for the benefits of the people of such Territory, and in accordance with their wishes."³⁴

It concludes:

“In the event that it could not be demonstrated that the FPA was implemented in conformity with the principles of international law concerning the rights of the Saharawi people over their natural resource, principles which the Community is bound to respect, the Community should refrain from allowing vessels to fish in the waters off Western Sahara by requesting fishing licences only for fishing zones that are situated in the waters off Morocco.”

For the period that this legal opinion from the parliament was still confidential, the leader of the Fisheries Committee told Western Sahara Resource Watch that the Parliament’s legal opinion “supported the legality” of continued fisheries in Western Sahara. When the document was made public, it was clear that it was not really the case.

Benefiting whom?

“I think each refugee should have one slice of bread with fish every day”, researcher Ingrid Barikmo told her colleagues in the refugee camps in Algeria, at a time when the four year fisheries agreement was half way through its application. The chronic malnutrition level in the refugee camps is worrisome. Studies have shown that in periods, one in every five Sahrawi children is acutely malnourished.³⁵

Ms Barikmo has studied the nutrition levels in the Saharawi refugee camps in Algeria for the last 15 years. Her colleagues during a meeting and her team often gather to discuss how to respond to the malnutrition among a population completely depending on aid. Their research has uncovered a worrisome situation for the Sahrawi people that fled their homeland in mid 1970s, as Morocco ignored the opinion of the International Court of Justice and invaded Western Sahara to the UN’s condemnation.

The refugees struggle with donor fatigue and malnutrition. 93% of the refugee children have an unacceptable diet, according to the team’s research.³⁶ Ms Barikmo’s suggestion of more fish in the diet was well-placed, but there are too few funds.

“My colleagues simply laughed at me. They thought I was joking”, Barikmo said later.

The European Union’s humanitarian organization, ECHO, donates in average 10 million Euros annually in humanitarian aid to these camps.³⁷ However, to compare, the EU paid 3.6 times as much to Morocco annually under the Fisheries Partnership Agreement for access to the fish stocks that are owned by the same refugees. The EU buys the Saharawis’ fish from Western Sahara’s occupation power, while the children in the refugee camps suffer from lack of protein.

The other half of the Saharawis still living in the occupied territory, also find the EU’s plans to be unfortunate. They say they do not benefit from it. When 799 international organisations in 2010 protested the EU’s plunder in a letter to the European Commission, all Saharawi groups were among the signatories.³⁸

Meanwhile, expressing opposition to the Moroccan management of the territory it occupies can lead to harsh punishments.

Any person being critical to the illegal Moroccan presence, will risk being subjected to human rights violations. This has been documented, year after year, by leading international human rights

organisations. Morocco in 2012 rejected a recommendation in the UN Human Rights Council to apply international minimum standards for registering organisations, including for Saharawi groups advocating for the Saharawi right to self-determination.³⁹

Leading Saharawi activists that took part in the organizing of the October-November 2010 protest camp outside of El Aaiún, in which socio-economic rights were called for, were convicted to severe punishments in a Moroccan military court. One of them, the secretary-general of Committee for Protection of Natural Resources, got sentenced to lifetime in jail. He has been an outspoken critic of the EU's fisheries activities of Western Sahara – and was one of nine to get such sentence.

The European Parliament has repeatedly expressed its concern over the abuses.⁴⁰ So have the reports from UN Secretary-General Ban Ki-Moon, who in 2013 and 2014 requested from the Security Council a permanent UN monitoring of human rights violations in the territory. The same two countries that lobby for EU trade deals covering Western Sahara – Spain and France – prevented such an inclusion in the MINURSO mandate, even after pressure from the US to do otherwise.

As the fisheries operations of the EU continued, Saharawis would carry homemade banners or tag on the walls of buildings in El Aaiún; “Where is our right in fishing treaty?”.

“We never had a voice in this undertaking, and the only outcome of the fisheries agreement that our people have noticed, is that our voices are suppressed even more, as Morocco feels itself supported by the European Union in its illegal and unfounded claim over our homeland. Since the Saharawi people have not agreed to nor benefits from the agreement, as required under international law, we respectfully ask that all European fisheries in Saharawi waters be halted immediately”, stated a group of Saharawi political prisoners in a letter to the president of the European Parliament.⁴¹

Most importantly, however, the Western Sahara liberation movement Frente Polisario repeatedly objected to the agreement. On numerous occasions did representatives of Polisario contact the EU institutions protesting the agreement. They have also called on the UN to intervene.⁴²

Before the agreement was adopted in the first place, in April 2006, the Fisheries Committee in fact took the initiative to have the two parties to the conflict, Morocco and Polisario, to participate in the Parliament for a joint consultation. However, as Morocco did not want to present its case at the same table as Polisario, the entire joint consultation was cancelled, to the joy of the Spanish socialists on the committee that had tried to prevent the initiative. The organisers stated that there would not be any such consultation if both parties were not present at the same time.⁴³ The consequence was the Polisario's view was never heard in meetings with the Fisheries Committee. In all future consultations, it would be Morocco that was to be invited instead by the EU institutions, alone, to discuss the management of the Western Sahara fish stocks.

At the time when the fisheries agreement was adopted in 2006, states, parliamentarians and the EU legal service stated that one cannot prejudge how or whether Morocco would comply with its obligations. When the four years came to an end, Morocco had never presented one shred of evidence on whether the people of Western Sahara benefited from the fisheries. One has every reason to wonder what was actually discussed at the annual meetings between the Commission and Morocco. They had had four years to find out.

In the end, the parliamentarians needed to take the issue into their own hands. A delegation from the European Parliament's Fisheries Committee was supposed to visit Western Sahara in 2010 to assess how the people were consulted and benefiting. After months went by without any official reply, Morocco officially rejected the Fisheries Committee's proposal of visiting the territory, claiming the timing for such a visit was "not opportune".⁴⁴

Five other known European delegations of journalists, civil society groups and students that travelled to the territory under-cover to investigate the matter application of the former agreement in 2010-2011, were expelled from Morocco or Western Sahara.⁴⁵

Morocco never presented any evidence to prove that the fisheries activities in Western Sahara under the agreement benefited the Saharawi people, nor that they have been consulted.

The silence from Morocco was frustrating for those European interests that lobbied for the agreement. "Morocco will not give it to us", the leader of the Fisheries Committee stated.⁴⁶

Many also raised the question what purpose it had to ask Morocco give such a report to begin with. They do not represent the Saharawis, do they?

Corell, the former UN legal chief that the EU had lent all its argument on, came back on the stage.

"The fisheries agreement is now (October 2010) up for a renewal. It has been suggested to me that the European Commission is of the opinion that it is for Morocco to see to it that the agreement is implemented in a manner that the interests of the Saharawi are taken into consideration. In view of the circumstances, in particular the political dispute over many years between Morocco and the Frente Polisario, this position is simply not acceptable. An honourable actor in the international arena must demonstrate a higher standard. This applies in particular to Europe where actions by States should be based on the Charter of the UN and modern treaties on human rights, such as the International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms", Corell wrote about the fisheries agreement in a new article in 2010.⁴⁷

It is, in the end, clear that the Saharawis do not benefit.

The nutritionists in the refugee camps can only observe that the fish will keep being absent from refugees' diet. Once a month, in average, do the refugees receive one small can of mackerel donated by a Swedish NGO.⁴⁸ The fish cans are labeled "Made in China".

Awkward Arguments

The European Commission, the pro-fishing parliamentarians and Morocco itself worked actively on defending the agreement during the 4 years the agreement lasted. They had a lot to defend. A successful implementation of the fisheries partnership agreement would lay the grounds for a new one later. These were some of the arguments:

a) Don't ask us, as Morocco. "The UN Corell opinion confirms that [...] exploitation activities should be carried out 'for the benefit of the peoples of those Territories, on their behalf or in consultation with their representatives'. The Commission is of the view that it is Morocco's responsibility to

ensure that this is the case", EU Fisheries Commissioner stated, as if the EU had no responsibility of the agreement.⁴⁹

b) Data will show the agreement is good. "The information on the economic impact of this agreement to the regions would only support the validity of this agreement"⁵⁰, EU ambassador Landáburu stated. This was before any data had yet been presented by Morocco to the EU, and while all evidence pointed to the opposite. In the end, no data was presented to answer to the prerequisites set by the European Parliament legal service.

c) Inventing legal support. In a press conference in Casablanca, the same EU ambassador to Morocco declared that "the legal services of the European Commission and all advices from independent institutions have shown that there is no problem with the international legality of the fisheries agreement with Morocco". After a number of letters had been sent to the ambassador and the Commission, his office finally replied that the independent legal opinions in fact were the two internal and confidential opinions from the European institutions themselves.

d) Claiming support from Parliament. "The EU fisheries partnership agreement with Morocco covers also Western Sahara. This was approved by the Commission and the European Parliament," the EU commissioner Joe Borg stated to a Swedish TV documentary in March 2010.⁵¹ The correct is that the EU stated back then that it would be in "Moroccan waters" and that the same commissioner admitted several times before the vote that they had gone to great lengths to avoid mentioning it was in Western Sahara. The entire vagueness of the scope of the agreement even left it impossible for the Parliament's legal service to conclude on the legality of it.

e) Misrepresented the critique. "As for human rights, that's a horizontal problem. Why is this agreement the only pact where this is raised as an issue?", said parliamentarian Carmen Fraga.⁵² The question was really never one of human rights, but of whether the EU should sign an agreement with the wrong government, in waters they never had claimed. In no other occasion would the EU sign agreement with the occupying power for fishing in occupied waters. As a parenthesis can be stated that human rights issues have been a main concern raised on other agreements.

f) If EU doesn't, someone else will. "A refusal would not mean the end of the use of maritime resources in the exclusive economic zone of the Western Sahara territory. Morocco could also conclude an FPA-style agreement with any other country seeking additional fishing resources. As a result, the FPA ensures that the demand for fish in the EU can be covered without fully exploiting or over-fishing the EU waters", German law firm Alber Geiger wrote in an email to a group of Parliamentarians 11 May 2011. The law firm was "representing Morocco's interest before the European Parliament."

g) Told opponents misused the agreement for political purpose. The agreement "could be used for political reasons, because that is the normal political game, but there is no problem", stated EU ambassador Landáburu.⁵³

The latter argument was repeatedly used, and is the key to the entire debate on the EU fisheries. Does it, or does it not have, a political dimension to fish in Western Sahara in partnership with the occupying power?

“Fishing in Former Sahara is apolitical”

The mentioned statement from the Moroccan government to the local media in Morocco, underlining that the fisheries agreement has a political dimension which is more important than the financial, should be enough to shoot down the EU ambassador's claims. Yet, both the Commission and the pro-fisheries lobby time and again argued that the agreement has no political significance.

"The Western Sahara issue will not be resolved here", stated a French, pro-Moroccan, parliamentarian in one of the debates in the Fisheries Committee.

"It is a polemic that tries to take political advantage of the media interest of an agreement", said the EU's chief negotiator for the EU-Morocco fisheries agreement, César Deben, shortly after the signing ceremony in 2006.⁵⁴

Ironically, in the same defense speech, Deben stated that Western Sahara waters had been "under Moroccan administration" since the Madrid Accords – the same accords that the 2002 legal opinion had found invalid.

"There has always been a polemic regarding this, even during the previous agreements. An agreement with Morocco includes all waters and fishing zones of the Moroccan Kingdom. [...] I can say that Morocco has agreements with Russia, the Ukraine and other countries, and here have never been such polemics. The interest lies not in the fisheries activity in the waters of the former Sahara (sic), but that it is the EU that is negotiating it. But we are very confident, as the legal opinions both from the European Commission and the Parliament, as well as from the Council of Ministers have been unanimous – the agreement respect all prerequisites of communitarian and international law", the negotiator said, misrepresenting the actual content of the Parliament's legal opinion.⁵⁵

'Former Sahara'? The statement from the former chief negotiator is clearly taking sides in the conflict, and appear in stark contrast to the UN terminology and to the foreign policies of the EU member states.

The claim that a fisheries accord covering the territory of occupied Western Sahara does not have political consequences is not only countered by the Moroccan minister of fisheries himself, as mentioned earlier, but also by Saharawis, Polisario, NGOs, scholars; all except the fish industry lobby.

"In order to find a solution [to the conflict], it is imperative that other actors do not behave in a manner that in fact risks undermining the efforts by the UN to find a solution. A particular responsibility rests with the members of the European Commission and in particular Spain", Ambassador Corell said about the agreement.⁵⁶

The Norwegian government, not part of the EU, has labeled similar natural resources engagement in Western Sahara for "a particularly serious violation of fundamental ethical norms because it may strengthen Morocco's sovereignty claims and thus contribute to undermining the UN peace process".⁵⁷

"It is extremely clear that Morocco only wants to keep the fisheries agreement with the EU for one reason – to legitimise Morocco's illegal occupation of Western Sahara by making the EU an accomplice", stated one of the many critics in the European Parliament, Isabella Lövin of the Swedish Green Party.⁵⁸

From 2011, a new document appeared that would shoot down the remaining arguments as to why the agreement should carry on. From then onwards, as all other arguments crumbled, even the pro-fishing lobby took to political arguments to defend the continued catches.

EU evaluation: all-time worst

At the time when EU fisheries agreements come to an end, the Commission is always obliged to contract an independent bureau to evaluate the implementation of the agreement. So too with the 2007-2011 EU-Morocco fisheries partnership agreement. The evaluation, done by a consultancy firm in Paris, did not go into details of the aspects of international law, the wishes of the Saharawi, or the political consequences that the Commission stated had been assessed. However, the report in detail studied and completely discredited the implementation of the agreement along two new fronts not much covered until then: the ecological destruction of Western Sahara waters and the financial loss to the EU.⁵⁹

The evaluation revealed that Morocco was unable to manage the fish stocks of Western Sahara in a sustainable manner. The 103 page evaluation report noted that the EU was co-responsible for the over-exploitation of the pelagic fish stocks and contributing to endanger threatened marine animals.

Of 11 demersal stocks fished in those waters, five appear overexploited, four are fully exploited, while two stocks were not sufficiently analysed due to lack of data. One of the priorities of the EU under the partnership was to have Morocco reduce unsustainable fisheries practices. In fact, the EU had during the entire agreement period requested that Morocco speed up the process of banning the use of driftnets, an unsustainable fisheries method banned by the EU. Morocco "is not doing enough" to stop the practice, stated EU fisheries commissioner Borg already in 2009.⁶⁰ The evaluation one year later revealed that the money destined for that purpose had not been used by Morocco at all.

The most surprising element of the evaluation was that the EU-Morocco fisheries agreement literally meant throwing money out of the window. The evaluation showed that "each euro spent by the EU only generated 83 cents turnover and 65 cents direct and indirect value added accruing to the EU [...] These are the lowest cost-benefit ratios of support to the European fleet across all ongoing bilateral agreements".

Said in other words: the information in the evaluation showed it would have been cheaper to just give the EU taxpayers' money directly to the fishermen in Spain, and not send them to Western Sahara to fish. Even in absence of an EU recession, such a deal would be nothing less than a squander. Tens of millions of Euros had been lost.

Finally, for those that claimed that the agreement was important for job creation for the local "Moroccan" economy, and as such important for the development of Morocco, also lost an argument: only 170 jobs were created under the agreement⁶¹. That's a whole lot of money for each job – not even taking into account whether they were Saharawis or not.

The leader of the Fisheries Committee, until then so defending of the agreement, was shocked about the findings. "The report is the most negative I have seen in my life", summarized Spanish Carmen Fraga, once the cat was out of the bag.⁶²

So what arguments were left to support continued fisheries after that?

According to the EU institutions' own reports, the agreement was in violation of international law, it destroyed the environment, it hardly created any jobs and it was a waste of EU money. Leading experts on the Western Sahara issue said it also undermined the UN peace efforts, by allowing Morocco to score political points.

The 2011 extension

Half way through the 2007-2011 fisheries agreement, a large constitutional reform shook up the relations between the EU institutions. The so-called Lisbon Treaty gave increased power to the Parliament in certain areas, among them the ability to over-rule the Council of Ministers in matters such as fisheries agreements. Gaining these privileges led to a new power dynamic between the three EU institutions: The Parliament, the Council and the Commission. It is the Commission's role to answer to the development of the fisheries agreement. Observant parliamentarians were often frustrated that getting information from the Commission on the implementation of the agreement was just like talking to a wall. It seemed that the Lisbon Treaty which gave the Parliament increased powers, did not inspire the Commission to share all it knows, or doesn't know, about fishy deals as the one with Morocco.

Even just getting a clear answer from the Commission as to whether fishing took place in Western Sahara at all was for a long time seemingly impossible. The revelation about the EU actually fishing in Western Sahara came only after Members of the European Parliament had asked seven (!) different written questions to the Commission, all with different wording and approach. The break-through came when a question was asked regarding the EU catch volumes under the current agreement reported from FAO's so-called fishing area 34.1.3, which is partially overlapping the Western Sahara waters.⁶³

Until then, when the Commission had been asked if EU vessels fished in the Western Sahara zone, the reply was normally that it was up to Morocco to define the area of application of the agreement.

"The lack of inter-institutional cooperation has obstructed the rapporteur's work through the entire process of preparing this draft recommendation", Finnish MEP Carl Haglund later stated as he was writing a report to the Fisheries Committee on the fisheries agreement. That is harsh language – particularly from a diplomatic parliamentarian as Haglund.

The lack of response and info-sharing was not due to a lack of knowledge. The Commission had constant dialogue with its Moroccan counterparts, and at all times would the Commission have full information of the whereabouts of its fleet. Modern tracking devices on the vessels give full traceability. Not only that. The Commission even made visits to the occupied territory.

"The original licences for both [...] vessels will be given in Dakhla on Monday morning by the Delegation of the European Commission and the Moroccan authorities to the vessel owner", stated a mail from the Commission to one of the member states in November 2007.

The same lack of information appeared as the critical evaluation was completed. One would imagine that the Parliament would have access to all evaluations that analyses how the EU taxpayers' money

is used. But no. For many months, it seemed that no one in the parliament even knew it had been written. When it was first known that it had been made, it was kept strictly confidential.

The evaluation report was only presented for a very limited circulation: It was only in French, only made available four months after it was made. And “available” is an exaggeration. Only the members of the parliament’s Fisheries Committee could see it. The document was only accessible in a separate small room that was equipped with a table, a chair, and a light bulb. Laptops, mobile phones and even assistants of the parliamentarians were not allowed near the holy document. In the past, those same reports had been available for all MEPs upon a simple request, but not after the Lisbon Treaty.

As the news started to spread that the evaluation was truly slaughtering the agreement, the mood in the parliaments started to change.

As the 2007-2010 agreement came to an end 27 February 2011, a new 4 year agreement had not yet come in place as Spain had pushed for. Under intense pressure from the Spanish government, a provisional one year extension was initiated from the following day. Such an extension would also give the Commission one more year to study the benefits accruing from the agreement to the “local populations”. An email from well-paid US lobbyist Ed Gabriel to the advisor of the Moroccan king, sent 10 May 2011, reveals how the 1 year extension had taken place. The Fisheries Commissioner after all did not want it: she was pushed to do so by the President of the Commission, Jose Manuel Barroso.⁶⁴

In order to be approved, the extension just had to be first passed in the Council of Ministers and then finally and formally approved by the Parliament in the autumn.

The debate in the European institutions during the whole year of 2011 was then whether or not to accept the 12 month continued fisheries which had already begun. The fish lobby would fail.

Growing opposition

On 13 December 2010, Morocco had for the first time forwarded information to the European Commission regarding how the EU funds had been used. The first impression was not too good. In a memo sent out from the Commission to the Council and Parliament on 16 February 2011, the content of the Moroccan report was diplomatically labeled as “some information” and “a step in the right direction”. The Commission noted that “The socio-economic impacts on this region are assessed specifically and information provided tends to demonstrate that this region is benefitting in terms of job creation and additional turnover”. However, a closer study of the Morocco’s short, 44 slide PowerPoint presentation, would lead to a different conclusion.⁶⁵ The document neither mentions Western Sahara nor its population at all. As expected from a report requested from the Moroccan government, it did not take into account the Saharawis, including the half of the people that lives as refugees in Algeria.

One month later, 15 March 2011, still no more information had arrived the Commission, as the PowerPoint was sent out to the Council of Ministers.

The meager “benefit report”, as it was named, proved to be crucial for many of the member states when they formulated their positions. It constituted the main argument for most of the Northern European countries, that all objected to extending the fisheries on such a shallow basis. But many

small states are not enough to stop a vote in the European Council. A large EU member state or two are required to reach the sufficient qualified blocking minority. As the UK was negative to the fisheries from the beginning, and Spain, France and Poland were positive, it was clear that the call would be with the German government.

As the German officials reviewed the file, they concluded there was no evidence whatsoever as to whether the local population benefited. It seemed thus that the prolongation would remarkably be stopped by the Council, only a few months after the 12 months extension had begun. In the end, however, in the last minute before the final vote on 29 June 2011, Germany turned around. Without any new evidence having been placed on the table, Germany stated there was “overwhelming” evidence that there was local benefit. They never explained why they changed position.

Some speculate that the German U-turn was due to a political crisis in the relations with Madrid. German authorities had only four weeks before falsely claimed that Spanish cucumbers were responsible for an outbreak of E.coli bacteria in Europe. Others point to the German relations with Morocco’s allies in France, relations that always have to be balanced carefully. Some claim it is due to Germany’s desire for green energy production in North-West-Africa. In any case, with Berlin’s last minute turn-around, the Council could approve with necessary majority, and, in the wait of parliament’s final approval later in the autumn, fisheries could still continue. No one appeared to challenge Germany as to what information – after four years of frustrating Moroccan silence - had appeared out of the blue in order to make them change opinion. Applying the loss ratio explained by the evaluation report, the decision to extend the four year agreement with yet another year constituted a financial loss for the EU at a minimum 12.6 million Euros⁶⁶.

By the autumn 2011, five months later, it was the Parliament’s turn to assess whether it would grant green light for what the Commission and the Council had already approved. Would they use their newly acquired Lisbon Treaty powers and actually stop an agreement that in either case would finish only two months later? The fisheries under the 1 year extension had by then already taken place for months. But there was discontent about the way it was extended despite of the flaws. “I am not happy that we had this sudden extension after asking for the Commission’s views for a year”, stated one parliamentarian.⁶⁷

The three committees – the Development Committee, the Budget Committee and the Fisheries Committee – would present its recommendations, but the fisheries committee would have most of the weight. It was the Fisheries Committee’s recommendation that would be presented to the Plenary. In each committee, most controversial aspects of the agreement were debated, including the Sahara issue.

The Budget Committee was first out. Taking into account the evaluation report, the budget committee really had no choice but to recommend rejection of the one year extension.

“This agreement presents a double problem: it is not regular in legal terms, nor is it in line with the sustainable objectives that Parliament upholds [...] Tax payers’ money needs to be spent wisely and legally”, the budget rapporteur French MEP François Alfonsi, remarked.⁶⁸

According to the rapporteur, the one single agreement with Morocco ate away a sizeable percentage of the entire budget that the EU has set aside for these types of bilateral fisheries agreements. "25% of the fisheries budget line is spent on this agreement – that is a lot", Alfonsi noted.⁶⁹

Surprisingly, even though it was documented as a spectacular financial loss for the union, it ended up in a close vote. And the voting procedure for this particular decision was apparently so confusing, that some parliamentarians ended up voting for the opposite of what they intended. As the turnout came negative to the prolonged agreement, a handful surprised Spanish socialists objected, but the chair of the meeting said that there would be no new vote.

Second out was the Development Committee – and they landed on the same conclusion. "The right way to go is not in neglecting international law, principles of environmental sustainability or sound economics", the Development Committee's rapporteur, Swedish MEP Isabella Lövin stated.

Presenting her report in the Development Committee on 10 October 2011, the rapporteur strongly urged the Parliament to turn down the proposed one year extension of the Protocol.⁷⁰

The rapporteur stated how the sectoral support given under the fish agreement had been "a failure". Under the agreement, an annual 13.5 million Euro was earmarked for the development of the local fisheries sector of "Morocco". Only 15% of that money had been used. The rapporteur added that it was furthermore "unacceptable that Morocco has totally neglected the European Commission's questions on the benefits and the wishes of the Saharawi people".⁷¹

At that point, neither Morocco, nor the European Commission, had provided any proof that the Saharawi had been consulted or benefitted from the fish deal that the EU has signed with occupier Morocco. As mentioned, these were the prerequisites that the Parliament's legal services had mentioned in their legal opinion two years before.

Morocco's mentioned refusal of a delegation of Parliament's Fisheries Committee to check up on the implementation of the fish deal was not appreciated by the Development Committee. "Such tactics - not answering questions or allowing delegations - should not be awarded", stated Lövin.

As the decision came up for vote in the Development Committee, the negative report was passed with an overwhelming majority. Only some objected.

French MEP Maurice Ponga was one of them. Illustratively, Ponga deemed it important to support Morocco's "profound reforms" through approving the agreement. Morocco needed, according to the argument, to be rewarded for its alleged political achievements through the fisheries agreement.⁷² Furthermore, "the fish have been caught and sold: we can't put them back in the water", he said. Ponga is himself from another non-self-governing territory, New Caledonia, and known as a fierce defender of the French control over the Melanesian archipelago.

To wrap it all up, the preparatory work in the committees ended with a splash in the Fisheries Committee. The rapporteur for the case in that committee, Finnish liberal Carl Haglund, issued a very critical report, diplomatically outlining the problematic aspects of the evaluation. The report was a draft recommendation written for the Plenary to vote on after being dealt with in the Fisheries Committee.

The “Haglund report” underlined the main conclusions from the evaluation: How the agreement had resulted in a large financial loss for the European Union and destroyed the ecology of Western Sahara's and Morocco's ocean waters. The recommendation also noted that there were questions as to the legality of the agreement, since it is being applied to the waters off Western Sahara, and that there is no information that clarifies whether the Saharawi people benefit from the agreement.

But the draft report did not slide through as in the other two committees.

The main reason is to be found in the composition of the Committee. It only has members of fishing nations, each member representing its own national fisheries interests. The debates in the Committee normally thus follows the logic of parliamentarians overbidding each other in offering themselves generous concessions on their own fishing grounds, while the parliamentarians of other nationalities would not object – since their own respective interests are up for debate later. That mechanism of horse-trading threatened fish stocks are in itself one of the main explanations of why the EU has managed to destroy its own marine environment. Just to make the EU-Morocco debate even more problematic: A disproportionate number of the members are Spaniards and French – the two states with the closest relations to Rabat. All this led to a near impossible job to get Haglund's fisheries report approved: In the vote in the Fisheries Committee, it was thus decided to amend its concluding sentence.

The very critical report that was in the end presented before the entire European Parliament therefore appeared to, mildly speaking, be a bad joke. To summarise a long argument in few sentences, it stated something like this, once the amendment was made: “Because it is damaging to the environment, because it is a waste of taxpayers' money, because of the controversy over Western Sahara, because it has no development effect, the EU fisheries agreement *therefore* has to be continued”. It was passed with a small majority. 12 for, eight against, one abstained.⁷³

“That went well”, stated a smiling Spanish parliamentarian to the content Moroccan delegation in the back of the room as the meeting closed. The final vote would take place in Plenary three weeks later, and the recommendation was to continue the fisheries *because* it was damaging to the environment, the EU economy and international law.

Historical decision

“No fishing activity from the European fleet will be tolerated and all boats operating in the area of the fisheries agreement are asked to leave national territorial waters on Wednesday before midnight,” the Moroccan foreign ministry said in a statement 14 December 2011. The Moroccan government underlined, half threatening, it would also do a “global reassessment of its partnership with the EU.”⁷⁴

The final vote in Strasbourg few hours earlier had come as a shock to most observers. It took the fisheries industry and the Moroccan government by complete surprise. 326 had voted in favour of ending the EU-Morocco fisheries protocol. 296 had voted against, while 58 abstained.⁷⁵ When the vote showed up on the screens in the parliament, spontaneous applause broke out in the room. The fisheries would end. It was the second time in the history of the European Union that a trade agreement was stopped by the European Parliament, and the first time ever for a fisheries agreement.⁷⁶

The surprise was, after all, maybe not that it was voted down. The peculiar thing was that in fact 296 Members of the European Parliament voted for the agreement. They didn't need to explain why. Most did it under the influence of the French and Spanish colleagues of the socialist and conservative blocks in the parliament.

There was, in the end, a lot at stake as the parliamentarians were requested to lay down their vote. The pressure on the members of parliament to accept a continuation of the fisheries had come mainly from three different fronts.

One was the Moroccan government itself with its main allies within the European Parliament. The Moroccan embassy to the EU had a large delegation consisting of lobbyists, parliamentarians and ambassadors seen strolling around in the corridors of the parliament. Morocco also commissioned a German law firm to represent them, a law firm that repeatedly contacted the parliamentarians.

The Moroccan ambassador several times met with his friends in a newly established EU-Morocco Friendship Committee at the parliament. The committee, a small group of mostly southern European parliamentarians, gathered with the ambassador a few times prior to the fisheries vote, and the main agenda was to agree how they could influence the mood in the European Parliament. The final touch to their arguments were developed and prepared by the embassy to its allies in this committee only a few days before the vote.

Hard copy documents written by the Moroccan government were circulated to the pigeon holes of Parliamentarians the day before the vote. The leaflets basically claimed that the findings of the Evaluation were erroneous, that the "political aspects of Western Sahara are not relevant to the EP's decision on the agreement"⁷⁷, and that Western Sahara is anyway part Morocco's "Southern regions".

The night before the vote, the president of the friendship committee, French MEP Gilles Pargneaux, without any underlying data, argued against the evaluation report, mailing to all other parliamentarians that the agreement is "economically profitable and ecologically responsible.[...] I appeal to your critical discernment to reject those amendments which clearly exploit the issue of Western Sahara for well understood political ends, thus jeopardizing any future agreement between the EU and Morocco."⁷⁸ The same Pargneaux would later "salute" the US for no longer demanding human rights monitoring in the mandate of the UN operation in Western Sahara, after the American suggestion had been blocked by the French government⁷⁹. The pro-Moroccan parliamentary group consistently labels the territory "Moroccan Sahara", and has, as opposed to other European parliamentarians, travelled unimpeded to the occupied territory with their Moroccan hosts.

The second active group lobbying the Parliament consisted of the Spanish and Moroccan fisheries sector, in partnership with Parliamentarians that represented them, mainly in the parliament's Fisheries Committee. "In the Arab Spring, at a moment in which Morocco has begun a democratisation process, it would be a very negative message from the EU to reject this agreement", vice-chairman of the Fisheries Committee wrote to all the parliamentarians the night before the vote, at a time when dozens of mails went back and forth between the defenders and opponents of the agreement on the European Parliament's internal mailing lists.

"If we reject the agreement, it will send a negative signal to the region, in a time when it is going through a process of democratic renewal. Morocco is an important partner of the European Union, our support for Morocco must go beyond simply making statements and declarations - of which we make many - we have to provide practical support", the vice-chairman wrote.⁸⁰

Thirdly, there was the Commission itself, that had invested a whole lot in this particular agreement, the EU's largest fisheries agreement. The fisheries commissioner, warned two days before the vote that the Parliament "will be judged" in the light of the EU-Moroccan overall relations. "The winds of change that have affected the Southern Mediterranean and some countries beyond have touched Morocco too. So what is the commission's assessment about it? The Commission's assessment is that in Morocco, the authorities have launched a significant reform with elaboration of a new constitution, increasing democratic accountability, and the respect for Human Rights. [...] The EU at all levels have welcomed these changes. [...] This framework we have to have in mind in front of our decisions", Damanaki said.⁸¹ Several parliamentarians felt the Commission's pressure. It was expected: "Mrs Fraga expects some pressure from the President of the Commission", it is stated in a mail sent to the Moroccan King from one of his lobbyists following an internal fish-vote-strategy meeting with the head of the Parliament's fisheries committee.⁸²

Yet, despite the calls from the supporters of the agreement, the European Parliament turned it down. While objecting to the extension, the parliament at the same time called for a new protocol between the EU and Morocco, in which the environmental and financial aspects as well as the "benefits" to the local population in Western Sahara, were taken into account.

Commissioner for Fisheries and Maritime Affairs of the EU, Maria Damanaki, stated that "the EC will fully respect the European Parliament's vote today. [...] We do not know if a new fisheries protocol with Morocco is possible. We will explore all the possible ways forward," she said as the result was clear.⁸³

The leading members of the Fisheries Committee had always stated that the Saharawi people's rights – or 'politics', as they said – had nothing to do in Fisheries Committee. Yet, suddenly the very same people had very strong opinions on the political importance of the fisheries agreements. It seemed it was the only argument left: Morocco is important to the EU.

Alain Cadec, vice-president of the Parliament's Fisheries Committee was in shock over the vote. "It is a very negative signal we are giving to Morocco in a time of Arab Spring", he stated.⁸⁴ The French parliamentarian had already stressed the importance of the "Moroccan fisheries all over the Moroccan territory".⁸⁵

French former Minister of Justice, of Moroccan origin, called the Parliament's rejection a "provocation" and said Morocco instead need to be supported for the "courageous reforms" that the Moroccan government has carried out.⁸⁶

The Spanish government stated its regret of the Parliament's decision and said that they "don't agree" with the Parliament – without going into details on why they didn't. Both ship-owners associations and fishermen associations regretted the decision.⁸⁷

"It is now urgent to find all possible means, through a specific and immediate action of the EU, to compensate the serious consequences of the agreement disruption that will hit many enterprises

and workers of the fishing industry", stated the president of the European association of national fisheries organizations. The group criticized Damanaki for not better defending the agreement in the European Parliament.⁸⁸

The Spanish government followed the demand from the sector and urged compensation from the EU for lost fisheries opportunities. By January 2012, the Spanish compensation demand to Brussels was at 16 million Euros.⁸⁹ That equals 1.6 times the amount of money that the EU aid organisation ECHO proudly donates every year to the Saharawi refugees – owners of the fish that the Spanish fishermen wanted to catch.

Also the ambassador of the EU to Morocco regretted the decision. "I am sorry for our relations with Morocco," the diplomat said. "Against the opinion of the Member States of the European Commission and Mrs. Ashton, EU High Representative for Foreign Affairs and Security Policy, the European Parliament voted against the proposed extension of the Protocol of the EU-Morocco fisheries agreement," Landáburu was quoted in the Moroccan state media.⁹⁰

Tomato side-effect

The Parliament's refusal of the fisheries agreement, and the following tension with Rabat, had a peculiar consequence. For years the Commission and Morocco had discreetly been negotiating another bilateral agreement, regarding free trade of agriculture and fisheries products.

The deal, which was an extension of the important EU-Morocco Association agreement from 2000, had already gone through the Council, and was up for vote in the Parliament on 16 February 2012, only two months after the European Parliament had thumbed down the fish pact. The agreement meant the trade liberalisation of a wide range of agriculture and fisheries products between the Moroccan and EU markets.⁹¹ No mention whatsoever was done to Western Sahara or to the Saharawis.

Through the agreement, the EU would risk to give trade preferences to products from Western Sahara. The problem was identical to the one of the fisheries. What right did Morocco have to strike deals on natural resources in Western Sahara without taking into account the wishes and interests of the Saharawis? Could Moroccan importers claim that a tomato is from Morocco if it in fact is from occupied Western Sahara?

The question would in principle be rather easy to answer: No European state recognizes Moroccan claims to the territory. Other non-EU countries, such as Norway, Switzerland or the US have clearly stated that trade preferences cannot be granted to goods from Western Sahara under their respective Free Trade Agreements with Morocco. In a recent case, a Norwegian importer was in fact imposed a 1.2 million Euro fine by the Norwegian government for importing goods from Western Sahara. The importer had falsely declared the goods as of Moroccan origin under Norway's free trade agreement with Morocco, and had thus incorrectly received tariff reduction on imported goods.⁹²

The EU tends, however, to go in the opposite direction: The EU has already approved the Moroccan government institution that issues origins of certificates for goods. That body has in turn offices located inside the occupied territories. Would the EU not violate its duty of non-recognition through such practice?

The vague geographical definition stirred debates. As the Parliament's agriculture committee looked into the agreement, it asked the Commission to identify whether Western Sahara goods would be included in the agreement or not. The Commission, unable to give a clear answer, invited the Moroccan ambassador himself for a hearing with the committee behind closed doors. "Let's start with the basics: Define your borders", the ambassador was challenged by the parliamentarians. After some time, the angry ambassador was observed departing the meeting room, slamming the doors.

An intense lobby was carried out on part of the Commission and the pro-Moroccan parliamentarians to avoid the same thing to happen to the trade agreement as what happened to the fisheries. In fact, the Parliament's rejection of the fisheries agreement in December 2011 was used as *an argument to not vote against the new trade agreement also*. Enough political damage had been caused on the relation with Rabat, was the argument. Yet, the problem was exactly the same:

The agreement was scheduled to directly benefit companies that export fish and agricultural products from Morocco. But many of these businesses operated from occupied Western Sahara. A report from Western Sahara Resource Watch identified eleven agricultural plantations in the region around the town of Dakhla, owned either by the Moroccan king personally, or by French or Moroccan agriculture companies.⁹³ Similarly, a range of fish processing companies in Western Sahara and South Morocco utilize fish caught or landed in Western Sahara. These two sectors together are an important part of Morocco's strategy to cement the occupation, by employing Moroccan settlers in Western Sahara.

As the agriculture agreement was up for vote, many raised questions over why the EU left it to Morocco to determine the borders of its national territory. Two of the three Parliamentary rapporteurs appointed to examine the proposed agreement – the rapporteur of the Committee on Agriculture and Rural Development, and the one on International Trade – both recommended that Parliament withhold its consent.⁹⁴ The legal dilemmas resulting from the possible inclusion of Western Sahara in the territorial scope of the new agreement were part of their concern.⁹⁵

On 16 February 2012, under intense pressure from the European Commission, the European Parliament consented to the new agreement; 369 MEPs voted in favour, 225 against and 31 abstained. Many parliamentarians were in fact under the impression that agri-industry doesn't exist in Western Sahara and that the geographical definition debate, thus, was irrelevant. While there was a lot of knowledge in the Parliament over the EU-Morocco fisheries agreement, controversies of the trade deal, however, went under the radar of most parliamentarians.

And it is not strange the debate never got as heated as on the fisheries. "So far there is practically no agricultural activity in Western Sahara", wrote the Commissioner for Neighbourhood Policy in a 'fact sheet' to the parliamentarians few weeks before the parliamentarians voted.⁹⁶ The fact that Morocco had plans for massive boom of the sector in the occupied territory was not mentioned. Nor that the agreement also covers fisheries products.

The European Commission welcomed the vote of the European Parliament on the agreement with Morocco.

"As I said in the Plenary debate, this is an important agreement, not only in economic terms, but also in political terms", Commissioner for Agriculture and Rural Development Dacian Cioloş stated to the EU lawmakers.⁹⁷

"To the extent that exports of products from Western Sahara are de facto benefitting from the trade preferences, international law regards activities related to natural resources undertaken by an administering power in a non-self-governing territory as lawful as long as they are not undertaken in disregard of the needs, interests and benefits of the people of that territory. The de facto administration of Morocco in Western Sahara is under a legal obligation to comply with these principles", stated Catherine Ashton⁹⁸. The fact that Morocco does not view itself as the administering power of Western Sahara, does not behave as such in the UN institutions, and that the UN does not view Morocco as such, seems not to be part of the EU's analysis. The EU also went, as on the fish, against the UN legal opinion from 2002. "The EU recognises the Moroccan commercial rights in Western Sahara", one Moroccan newspaper interpreted Ashton's statements.⁹⁹

Alain Cadec, the same parliamentarian that lamented the turn-down of the fisheries activities in Western Sahara because Morocco positively had approached the Arab Spring, said the new trade deal was important since Morocco goes through a series of economic reforms.¹⁰⁰

The Moroccan ambassador to the EU called it "a great relief". "It is evidence of MEPs' confidence in the development and reform process in Morocco," he told the press.¹⁰¹ His superior had told that the outcome was thanks to the work of the diplomatic service and Moroccan MPs.¹⁰²

The EU-Moroccan relations were back on track.

The new trade agreement, in the end, entered into force on 1 October 2012. Since then, some states have raised concerns regarding the application of it. Both Sweden and the Netherlands have so far stated that goods coming from Western Sahara cannot be given preferential tariffs to the EU under the agreement.¹⁰³ The Commission again chose to look away from the Saharawi people's rights. The EU is split yet again.

Four more years

Back to the fisheries – the story hasn't ended. To the contrary. Immediately after the fish agreement had been voted down, and the fleet the was pulled out, the debate on EU fisheries in Western Sahara started all over again, from the very beginning. By the time of the December 2011 landslide, the former Commissioner for Fisheries, Maltese Joe Borg, had already been replaced by a more critical voice: Greek Maria Damanaki. As politically active against the former dictatorship in Greece, Damanaki was a keen defender of human rights – an, until then, not too much mentioned combination of words pronounced in the EU fisheries meetings.

Her first suggestion, supported by several states, was altogether to exclude Western Sahara from the new agreement with Morocco, and that this should be mentioned in her negotiation mandate.¹⁰⁴

"Excluding Western Sahara waters would make it impossible for Morocco to reach to an agreement", stressed the president of the Spanish fisheries confederation, CEPESCA. He stated that because Western Sahara has been included in the deals before, they must be so again.¹⁰⁵

Together with its Moroccan partners, CEPESCA has for years carried out lobbying in the EU institutions. In CEPESCA's view, the suggestion to exclude Western Sahara, would not be a "viable" option for Rabat. Instead, CEPESCA underlined, Morocco would rather have to assure benefits accrued to the region – the same demand that the EU raised half a decade earlier, but which Morocco never bothered to report on.

After intense pressure from Spain, the Commission's suggestion to exclude Western Sahara was dropped from the draft negotiation mandate. Instead, a new suggestion was that the draft text would state clearly that the fishing zones covered by the envisioned agreement will include those "off the waters of the Non-Self Governing Territory of Western Sahara, south of 27°40N". A second specific mention stated that the Commission expected Morocco to guarantee it will fulfill its obligations under international law which result from the "de facto administration of Western Sahara". According to the Commission, Morocco should regularly report on the geographical distribution of the socio-economic impact stemming from the support given under the agreement.

These two references to Western Sahara, however, stirred debates at the Council level for weeks. Spain and France, backed up by the fishing nations of Portugal, Latvia and Lithuania, demanded that any specific mention of Western Sahara be removed from the text, in order not to upset the Moroccan counterpart. On the other hand, countries like Sweden, the Netherlands, the UK and Germany favoured a clear reference.¹⁰⁶

The territory of "Western Sahara" was, in other words, considered by several governments as too political to mention. But apolitical if omitted. Obviously, the only party to take into account upon assessing the political controversy of the EU fishing in Western Sahara is, for some actors, the occupying power Morocco. With that in mind, the previous explanations of the apolitical nature of the fisheries agreement are placed in a whole new perspective. The Commissioner stressed back in 2006 that it respected international law and would not prejudice the Western Sahara issue. "He also noted that the agreement made no direct reference to the Western Sahara", wrote Financial Times.¹⁰⁷

So the negotiation mandate had to be changed: One could indeed fish, but just without mentioning where. As the reference to Western Sahara was in the end forced out of the negotiating mandate due to the mostly the Spanish pressure, Commissioner Damanaki instead introduced a clause on human rights as a precondition for a new agreement. But even the insistence on a human rights paragraph infuriated the Moroccans and remained the main hindrance to the further negotiations. Even critics of the plans of a new agreement in Western Sahara questioned the insistence on human rights: The European Parliament had repeatedly condemned the Moroccan human rights track record in Western Sahara, while the UN Secretary General expressed his deep concern. If Human Rights were a precondition, would the terms not then already be broken the very same day that the agreement were to be signed?

While the negotiations took place, the European Parliament repeatedly stressed that the Human Rights in Western Sahara were violated. In February 2013 it stated that it "Expresses its concern at the continued violation of human rights in Western Sahara; calls for the protection of the fundamental rights of the people of Western Sahara, including freedom of association, freedom of expression and the right to demonstrate; demands the release of all Sahrawi political prisoners; welcomes the establishment of a Special Envoy for the Sahel and stresses the need for international

monitoring of the human rights situation in Western Sahara; supports a fair and lasting settlement of the conflict on the basis of the right to self-determination of the Sahrawi people, in accordance with the relevant United Nations resolutions".¹⁰⁸

Summer of 2013, while all EU institutions were on summer break, a new agreement was reached between the Commission and the Government of Morocco.¹⁰⁹ No human rights clause was introduced, the first time to happen in a European fisheries partnership agreement since 2010.¹¹⁰ Instead, a vague reference to the human rights clause in Association Agreement was made as a compromise with the Moroccans.

In parallel during the negotiations, the two very same EU states that lobbied most fiercely for the Commission to enter into the agreement, Spain and France, prevented permanent UN monitoring of human rights in the territory. The UN Secretary-General Ban Ki-Moon has repeatedly urged the Security Council to introduce a permanent mechanism for human rights monitoring, which the US government suggested to the Security Council. The suggestion was shot down by the two states. Thus, it is unlikely that the gravity of the Moroccan violations will ever be documented well enough to have the deal blocked.

The parliament approved that new agreement on Human Rights day, 2013. The EU community had achieved a cheaper agreement, but the international law violation in the new agreement was just as massive as in the past. That was enough change to give the Spanish fishing fleet – and the Moroccan government – its majority in the parliament.

Later that same day a dozen Saharawis were injured by Moroccan security forces in occupied Western Sahara as they protested the EU signing an illegal deal for the plunder of their fish stocks.¹¹¹

Conclusion: History

The voting down of the EU fisheries on in Western Sahara 14 December 2011 was a historical vote. It was the second time in the history of the European Union that the Parliament used its powers to stop an agreement.

The EU's own institutions, as well as the independent reports it had commissioned, documented that the EU fisheries agreement in Western Sahara was damaging the ecology, financially catastrophic for the EU, hardly creating any jobs – and violating international law. As the mood went against the deal, its defenders had fiercely tried all strategies to support the continued fisheries. They misrepresented the EU reports, they claimed the reports were wrong, and, most importantly, they argued for the political importance of Morocco.

The EU is an ally of Morocco – therefore the EU fleet must fish in Western Sahara. That was the logic during these hectic last days before the final vote. The same forces who so intensively argued for the apolitical nature of the EU fisheries practices in Western Sahara had switched to the other extreme. They argued with geopolitics to defend fisheries.

A completely new development might shake things up when it comes to the vague EU trade deals with Morocco. In February 2013 it was known that Frente Polisario had taken legal steps. The European Court of Justice has registered a complaint from Polisario to look into the legality of the

EU's trade agreement with Morocco on fisheries and agricultural products.¹¹²In 19 March 2014, Polisario was to bring the new fisheries protocol to ECJ too.¹¹³

These were the first times that legal measures are taken to stop EU's participation in the plundering of the territory. If the court agrees with Polisario, it could affect not only the agriculture agreement, but also put a halt to other EU plans to enter into dubious deals with Morocco in the territory which obviously is not part of Morocco.

The fish stocks offshore Western Sahara do not belong to Morocco, nor to the EU. The resources of Western Sahara belong to its people, the Saharawi.

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