

Here is the secret legal opinion from the EU Parliament

WSRW can today present the 11 page statement from the European Parliament's Legal Service. The statement – concluding that EU fisheries in occupied Western Sahara under its current shape is in violation of international law - has been kept from the public for 7 months.

The strong text demands respect of international law vis-à-vis EU fisheries in Western Sahara and was delivered on 13 July 2009.

Below you find first a 3 page summary, as a letter delivered to the Development Committee, and at the bottom the 11 page Legal Opinion.

Read also WSRW Press release: [European Parliament's lawyers declare EU fishing illegal](#)

Strasbourg,
13 July 2009

Note for the attention of Mr. Josep BORRELL FONTELLES,
Chair of the Committee on Development
(c/o Mr. Michael WOOD, Committee Secretariat)

Re. Fisheries Partnership Agreement between the European Community and the Kingdom of Morocco – Declaration by the Saharawi Arab Democratic Republic January 2009 of jurisdiction over an Exclusive Economic Zone of 200 nautical miles off the Western Sahara- Catches taken by EU-flagged vessels fishing in the Western Sahara.

By letter dated 6 May 2009, received by the Legal Service on 7 May 2009, you requested a legal opinion on the legal consequences for the Fisheries Partnership (FPA) between the European Community and the Kingdom of Morocco of the declaration by the Saharawi Arab Democratic Republic (SADR) of 21 January 2009 of jurisdiction over an Exclusive Economic Zone of 200 nautical miles off the Western Sahara.

In light of the above, the Legal Service answers the two questions as follows:

"As for the declaration of jurisdiction over an EEZ of 200 nautical miles off the Western Sahara by SADR

The declaration of jurisdiction over an EEZ off Western Sahara by SADR does not produce legal consequences on the FPA with Morocco . Such declaration cannot produce three different reasons :

- SADR does not enjoy the characteristics of statehood;
- it is not an cannot be a signatory party of UNCLOS;

- the territory which it claims not only is barely to a limited extent subject to its control, but is considered as a whole to be a Non Self-Governing Territory within the meaning of the United Nations Charter.

As for the catches taken by EU-flagged vessels fishing in the waters off the Western Sahara

Following a series of parliamentary questions to the Commission, it appears that EU-flagged vessels have fished in the waters off Western Sahara. Not only this can be deduced from data provided by the Member States to the Commission pursuant to their obligations established by Community legislation on "control", but also it has also been explicitly stated in several Commission declarations.

In its previous legal opinion of 20 February 2006, the Legal Service noted that, failing a clear delimitation in the FPA of the fishing zones in which EU vessels were entitled to fish, it cannot be excluded that Community vessels would operate in the waters off Western Sahara. The Legal Service considered however that it was not possible at that time to predict how the FPA would be implemented. The Legal Service observed that if it could not be said that the FPA is, as such, contrary to the principles of international law, the implementation of the FPA would determine if the principles of international law concerning the rights of the people of Western Sahara will or will not be complied with.

More than two years after the entry into force of the FPA (28 February 2007) a first assessment of the implementation of the FPA can now be done, especially with regard to the implementation of the sectoral fisheries policy referred to in Article 7(1)(b) of the Agreement and in Articles 6 and 7 of the Protocol. The matrix of objectives/results of the FPA fisheries policy identifies both global and specific objectives and lists the actions programmed to attain those objectives over the period of application of the agreement.

One has to note from the outset that this matrix does not contain specific actions explicitly foreseen with a view to benefit the population of Western Sahara . It is true that some actions are foreseen in the matrix target port towns situated in the territory of Western Sahara, such as Laayoune, Dakhla and Boujdour. However, it is not demonstrated that the EC contribution 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 the Non Self-Governing Territory are carried out for the benefits of the people of such Territory, and in accordance with their wishes.

The actions mentioned in the matrix essentially aim at improving the infrastructure of the ports of Western Sahara . This is not necessarily equal to benefiting the people of Western Sahara insofar as they are not mentioned in the programming document and it is not known whether and to what extent they are able to take advantage of such improvements.

The Legal Service is not in a position to establish the facts on the ground and to conclude that the abovementioned actions targeting ports of Western Sahara actually benefit the population of Western Sahara . This assessment needs to be done in concrete terms on the basis of all relevant information, and the Joint Committee established in the FPA should play in this context.

On the basis of the elements that are currently available (catches by EU flagged vessels in the waters of Western Sahara, lack of evidence in the annual and multiannual plans for the exploitation of fisheries resources in Western Sahara actually benefits the Saharawi people) it is strongly recommendable that the next annual meeting or a special meeting of the Joint Committee addresses these issues with a view to find an amicable settlement, fully respecting the rights of the Saharawi people under international law. If such an amicable settlement could not be found, the Community should envisage either the suspension of the agreement in conformity with its Article 15 and Article 9 of the Protocol, or to apply the agreement in a way that EU flagged vessels are excluded from the exploitation of the waters of Western Sahara.

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 resources, principles which the Community is bound to respect, the Community should refrain from allowing vessels to fish in the waters off Western Sahara by means of licences only for fishing zones that are situated in the waters off Morocco".

The Legal Service remains at your disposal for any further information you may require.

By delegation of the Jurisconsult
Johann SCHOO

Legal Service
Strasbourg,
13 July 2009

LEGAL OPINION

Re. Fisheries Partnership Agreement between the European Community and the Kingdom of Morocco – Declaration by the Saharawi Arab Democratic Republic of 21 January 2009 of jurisdiction over an Exclusive Economic Zone of 200 nautical miles off the Western Sahara- Catches taken by EU-flagged vessels fishing in the Western Sahara.

I. Introduction

1. By letter dated 6 May 2009, [1] received by the Legal Service on 7 May 2009, Mr. BORELL FONTELLES, Chairman of the Committee on Development, requested a legal opinion on the legal consequences for the Fisheries Partnership (hereafter, FPA) [2] between the European Community and the Kingdom of Morocco of the unilateral declaration by the Saharawi Arab Democratic Republic (hereafter, SADR) of 21 January 2009 of jurisdiction over an Exclusive Economic Zone of 200 nautical miles off the Western Sahara.

2. The letter requesting the legal opinion makes a reference also to data, provided by the Commission, on catches taken by EU-flagged vessels fishing in the waters off Western Sahara.

3. The present request for an opinion follows a previous request made by the Committee on Development on 25 January 2006 concerning the compatibility of the FPA with international law. The Legal Service delivered its opinion SJ-0085/06 on 20 February 2006.

II. The conclusions reached by the Legal Service in opinion SJ-0085/06 as to the compatibility of the FPA with the principles of international law

4. In its opinion SJ-0085/06 the Legal Service reached the following conclusions:

a) *The Fisheries Agreement under consideration does not explicitly foresee that the waters of the Western Sahara are included in its area of application, nor does it expressly prohibit Moroccan authorities from issuing fishing licenses to Community vessels to operate in the waters which are geographically in front of Western Sahara;*

b) *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;*

c) *In this respect, the Agreement explicitly acknowledges that the Moroccan authorities have a "full discretion" regarding the use to which the financial contribution is put (see Article 15 of the Protocol). It is therefore up to them to assume their responsibilities in that respect;*

d) *As to the effects of the agreement for the people of Western Sahara, the way which the Moroccan authorities intend to implement this agreement and the extent to which it will bring the benefits that it brings to the local people, it would be useful for Parliament to receive indications from the Commission and/or from the Council;*

e) *If the implementation of the agreement raises difficulties, it should be noted that a Joint Committee is set up in order to supervise the implementation of the agreement (see Article 15 of the Protocol). In case the Moroccan authorities disregard manifestly their obligations under international law vis-à-vis the people of Western Sahara, the Community could consider entering into bilateral consultations with a view to suspending the agreement (Article 15 of the Agreement and article 9 of the Protocol).*

III. The developments intervened since the legal opinion SJ0085/06 of 20 February 2006

5. It results from the request for a legal opinion that two major events have occurred in the course of the application of the FPA with Morocco:

a) By Law No 03/2009 of 21 January 2009 establishing the Maritime Zones of the Saharawi Arab Democratic Republic, the latter issued a declaration of jurisdiction over an Exclusive Economic Zone (hereafter, EEZ) of 200 nautical miles off the Western Sahara;

b) In the framework of the implementation of the FPA with Morocco, the Commission has provided data on catches taken by EU-flagged vessels fishing in the waters off the Western Sahara.

6. It is necessary to assess what are the legal consequences of these two new events for the FPA with Morocco, in particular with regard to its compatibility with international law.

IV. Legal analysis

A) The declaration of jurisdiction over an Exclusive Economic Zone (EEZ) of 200 nautical miles of the Western Sahara by SADR

7. The effect of this declaration by the SADR depends on the legal status of the SADR and of the Western Sahara territory in international law.

8. The SADR was proclaimed by the Polisario Front in 1976 and it currently controls a minor part of the territory of Western Sahara that it claims, the large majority of which remains under the control of Morocco. It presents some elements that are typical of a State, such as a government structure with a President, a Prime minister and a Parliamentary Assembly (Saharawi National Council) and a Constitution, but the status of SADR in international law remains largely uncertain.

9. Indeed, even if SADR was recognized by a certain number of States, most of them have withdrawn their recognition or frozen their diplomatic relations pending the outcome of a referendum. No Member State of the European Union has recognized it. While the SADR is a member of the African Union Organisation, it is not a member of the United Nations. In this context, it is worth noting that in its resolutions, the Security Council considers, as parties to the conflict and the negotiations, Morocco on one hand and the Polisario Front on the other, and not SADR. [3]

10. The legal regime of the EEZ is laid down in the United Nations Convention on the Law of the Sea 1982 (Part V) (UNCLOS). Not only SADR is not party to the UNCLOS, but Morocco is not either. Pursuant to Article 305 of the Convention, this is open to the signature only of specific categories of entities to which the SADR does not belong. [4]

11. On the other hand, the territory that is claimed by SADR, the Western Sahara, is still considered to be a Non Self-Governing Territory within the meaning of Article 73 of the United Nations Charter and Spain is still reported on the list of the de jure administering powers. [5]

12. From a political point of view, negotiations are ongoing between the parties involved, with a view to achieving a just, lasting and mutually acceptable solution, which would lead to the self-determination of the people of Western Sahara. [6]

13. It follows from the foregoing that the declaration made by the SADR concerning the EEZ off Western Sahara cannot produce legal effects for three different reasons:

a) SADR does not enjoy the characteristics of statehood;

b) it is not and cannot be a signatory party of UNCLOS;

c) the territory which it claims not only is barely to a limited extent subject to its control, but is considered as a whole to be a Non Self-Governing Territory within the meaning of Article 73 of the United Nations Charter.

14. It can thus be concluded that the declaration of jurisdiction over an EEZ off Western Sahara by SADR does not produce legal consequences on the FPA with Morocco.

B) The catches taken by EU-flagged vessels fishing in the waters off the Western Sahara

15. Following a series of parliamentary questions to the Commission, it appears that EU-flagged vessels have fished in the waters off Western Sahara. Not only this can be seen from the data provided by the Member States to the Commission pursuant to their obligations established by Community legislation on "control", [7] but also it has also been explicitly acknowledged in several Commission declarations.

16. On 12 September 2008, Mrs FERRERO-WALDNER, Commissioner for External Relations, gave the following written answer on behalf of the Commission: "*Concernant les bénéfices pour les populations du Sahara Occidental, la politique sectorielle de la pêche du Maroc soutenue par l'accord de partenariat de prévoit des mesures de développement du secteur au Sahara Occidental profitant directement aux populations locales. En outre, des marins sahraouis ont été recruté par des armateurs des navires pêchant dans la zone du Sahara Occidental*". [8]

On 12 March 2009, in reply to question n° 67 by J. HOLM (H-0079/09), the Commission declared:

"there are no data with regard to the issuing of licences specifically to fish in the Western Sahara region. However, most of the pelagic vessels fishing under category 6 of the FPA are active in this region and make a substantial contribution to the local landings".

17. In its previous legal opinion of 20 February 2006, the Legal Service noted that, failing a clear delimitation in the FPA of the fishing zones in which EU vessels were entitled to fish, could not be excluded that Community vessels would operate in the waters off Western Sahara. The Legal Service considered however that it was not possible at that time for the FPA would be implemented. [9]

18. The Legal Service noted further that international law does not prevent as such an administering power from undertaking activities related to the natural resources in a Non-Self-Governing Territory, but only insofar as those activities are carried out in disregard of the interests and of the wishes of the people of that territory, in this case of Western Sahara. In this regard it was stated that the *de facto* administration of Morocco in Western Sahara is under a legal obligation to comply with these principles of international law. [10]

19. With regard to the European Community, it is clear that it must play its role in that regard in so far as it has concluded an international agreement whose scope of application covers natural resources that are subject to a specific legal regime in international law. In this respect, the European Community is clearly bound in the exercise of its powers by the rules of international law. [11]

The terms of the FPA with Morocco

20. As it was observed in the previous legal opinion, the FPA does not contain any reference on how the possible economic activities undertaken on the fisheries resources of Western Sahara can benefit the people of this territory. More generally, the FPA does not contain any reference to the status of Western Sahara. [12] The FPA states that, subject to the provisions of Article 6 of the Protocol (definition and implementation of a sectoral fisheries policy), the Moroccan authorities have a "*full discretion*" regarding the use to which the financial contribution is put (Article 2(6) of the Protocol).

21. The Legal Service observed that if it could not be said that the FPA is, as such, contrary to the principles of international law concerning the rights of the people of Western Sahara or will no longer comply with. [13]

22. More than two years after the entry into force of the FPA (28 February 2007) a first assessment of the implementation of the FPA can now be done, especially with regard to the implementation of the sectoral fisheries policy referred to in Article 7(1)(b) of the Agreement and in Articles 6 and 7 of the Protocol. Under the terms of the agreement, a whole financial contribution paid by the Community shall be used for defining and implementing a sectoral fisheries policy including the modernisation and upgrading of the infrastructure, the programme to abolish driftnets, scientific research, restructuring of small-scale fishing, upgrading of marketing channels, and promotion of domestic consumption, methods of landing and handling fish, training and support for professional organisations. These priorities and objectives shall be implemented by way of an annual and multi-annual programming to be agreed by the two parties in the framework of the Joint Committee.

The programming of measures for the implementation of the sectoral fisheries policy

23. In reply to a certain number of parliamentary questions concerning the respect of the rights of the people of Western Sahara over their natural resources, the Commission declared that the support for the fisheries sector in the Western Sahara is one of the elements of the sectoral fisheries policy mentioned above and that it is taken into account in the programming of measures to be undertaken in the framework of the Agreement. It has also declared that landings in the Western Sahara ports of Dakhla and Layoune have taken place and that Saharawi sailors have been engaged by European ship-owners on the vessels fishing off Western Sahara. [14]

24. According to the information available to the Legal Service, the programming of measures with the aim of implementing the abovementioned sectoral fisheries policy is contained in the minutes of the third and fourth Joint Committee held respectively in March 2008 and April 2009. [15]

25. The matrix of objectives/results of the sectoral fisheries policy identifies both global and specific objectives and lists and the actions programmed to attain those objectives within the period of application of the agreement. One has to note from the outset that this matrix does not contain specific actions explicitly foreseen with a view to benefit the population of Western Sahara. As it is the case in the wording of the FPA, there is no trace of any reference to the Saharawi territory of population.

26. It is true that some actions foreseen in the matrix target port towns situated in the territory of Western Sahara, such as Laayoune, Dakhla and Boujdour. This is also reflected in a report drawn up on 27 March 2009 by the Ministry of Agriculture and Fisheries of the Kingdom of Morocco dressing up a balance for the years 2007-2008 and indicating the actions programmed for 2009 concerning the Community financial support to the sectoral fisheries policy in the Kingdom of Morocco. [16]

27. On the basis of the above elements, it is not demonstrated that the EC financial contribution 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 benefit of the people of such Territory, and in accordance with their wishes. [17]

28. The actions mentioned in the matrix essentially aim at improving the infrastructure of the ports of Western Sahara. This is not necessarily equal to benefiting to the people of Western Sahara insofar as they are not mentioned in the programming document and it is not known whether and to what extent they are able to take advantage of such improvements, although it might be the case, it does not appear that the wording of the programming documents contain convincing evidence in that respect.

29. In this framework the Legal Service considers that it is appropriate to recall a few elements that seem undisputed:

- a) The ports referred to above are located in the part of Western Sahara which is controlled by Morocco;
- b) Following Morocco's occupation, the demography of the region has been substantially modified due to the fact that Moroccan people have been settling in the region. On the other hand, the Saharawi population is reported to be not integrated and to live in precarious conditions in camps, even outside the territory of Western Sahara (for instance the Tindouf camps in Algeria). The situation concerning the respect of the human rights of the Saharawi population (including freedom of movement) has been the subject of concern, in particular before the European Parliament. [18]

30. Taking into account the above elements, the Legal Service notes that it is not in a position to establish the facts on the ground and to conclude that the abovementioned actions targeting ports of Western Sahara actually benefit the population of Western Sahara. This assessment needs to be done in concrete terms on the basis of all relevant information. The Joint Committee established in the FPA has a role to play in this context.

The role of the Joint Committee

31. In its previous legal opinion the Legal Service had already drawn attention to the role of the Joint Committee with regard to the implementation of the agreement. This role is the appropriate instance within which the Community has to make sure that the implementation of the agreement is carried out in conformity with the abovementioned principles of international law. Under the terms of Article 10 of the FPA, the Joint Committee shall "a) supervise the implementation, interpretation and smooth operation of the application of the Agreement" and "b) define and evaluate the implementation of the application of the annual and multiannual programming" (emphasis added). Needless to say that such a role also covers the respect of the obligations arising from international law vis-à-vis the rights of the Saharawi people over their natural resources, in the event that EU flagged

fish in the waters of Western Sahara.

32. In order to accomplish its tasks, the Joint Committee shall meet at least once a year, but it shall hold a special meeting at the request of either of the parties (Article 6 of the FPA).

33. If it appears that EU flagged vessels actually exploit fisheries resources located in the waters off Western Sahara and there are doubts about whether such exploitation takes into account the interests and wishes of the people of Western Sahara, the Joint Committee should address the issue and try to find a solution which guarantees that the FPA is implemented in conformity with the principles of international law.

34. On the basis of the elements that are currently available (catches by EU flagged vessels in the waters of Western Sahara, lack of evidence in the annual and multiannual reports that the exploitation of fisheries resources in Western Sahara actually benefits the Saharawi people) it is strongly recommendable that the next annual meeting or a special meeting of the Joint Committee addresses these issues with a view to find an amicable settlement, fully respecting the rights of the Saharawi people under international law. If such an amicable settlement could not be found and the parties are in disagreement as to the application of the agreement or the Protocol, the Community should envisage either the suspension of the agreement in conformity with its Article 15 and Article 9 of the Protocol, or to apply the agreement in such a way that the EU flagged vessels are excluded from the exploitation of the waters of Western Sahara.

35. Indeed, it results from the FPA that licence applications and licences issued to the EU vessels shall indicate the fishing zones where the vessels can operate (point 1(4) of the Annex to the Protocol). Even though certain fishing datasheets (Appendix 2 of the Annex) do not provide a clear delimitation as to the southern limit of the fishing zones, the Community is not prevented from submitting fishing licences only for fishing zones that are off the territory of Morocco and not of Western Sahara.

36. Fishing licences applications are submitted to Morocco by the Commission upon request by the Member States following the procedures established by Council Regulation (EC) No 1006/2008. [20] The Member States shall submit to the Commission applications for fishing authorisations that are "in accordance with the agreement concerned" (Article 6(3)(a)) condition should be verified by the Commission (Article 6(3)(a)) that has the obligation not to transmit applications that do not comply with the conditions laid down in the agreement concerned and in the Regulation No 1006/2008 (Article 7(1)(c)).

37. 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 to their natural resources, principles which the Community is bound to respect, the Community should refrain from allowing vessels to fish in the waters off Western Sahara and issue fishing licences only for fishing zones that are situated in the waters off Morocco.

V. Conclusion.

38. In the light of the above, the Legal Service reaches the following conclusions:

As for the declaration of jurisdiction over an EEZ of 200 nautical miles off the Western Sahara by SADR.

1. The declaration of jurisdiction over an EEZ off Western Sahara by SADR does not produce legal consequences on the FPA with Morocco. Such declaration cannot produce any effect for the following reasons:
- SADR does not enjoy the characteristics of statehood;
- It is not and cannot be a signatory party of UNCLOS;
- The territory which it claims not only is barely to a limited extent subject to its control, but is considered as a whole to be a Non Self-Governing Territory within the meaning of Article 76 of the United Nations Charter.

As for the catches taken by EU-flagged vessels fishing in the waters off the Western Sahara

2. Following a series of parliamentary questions to the Commission, it appears that EU-flagged vessels have fished in the waters off Western Sahara. Not only this can be seen from the data provided by the Member States to the Commission pursuant to their obligations established by the Community legislation on "control", but also it has also been explicitly acknowledged in several Commission declarations.

3. In its previous legal opinion of 20 February 2006, the Legal Service noted that, failing a clear delimitation in the FPA of the fishing zones in which EU vessels were entitled to fish, it could not be excluded that Community vessels would operate in the waters off Western Sahara. The Legal Service considered however that it was not possible at that time to determine if the FPA would be implemented. The Legal Service observed that if it could not be said that the FPA is, as such, contrary to the principles of international law, the implementation of the FPA would determine if the principles of international law concerning the rights of the people of Western Sahara will or will not be complied with.

4. More than two years after the entry into force of the FPA (28 February 2007) a first assessment of the implementation of the FPA can now be done, especially with regard to the implementation of the sectoral fisheries policy referred to in Article 7(1)(b) of the Agreement and in Articles 6 and 7 of the Protocol. The matrix of objectives/results of the fisheries policy identifies both global and specific objectives and lists the actions programmed to attain those objectives over the period of application of the agreement.

5. One has to note from the outset that this matrix does not contain specific actions explicitly foreseen with a view to benefit the population of Western Sahara. It is true that some actions are foreseen in the matrix target port towns situated in the territory of Western Sahara, such as Laayoune, Dakhla and Boujdour. However, it is not demonstrated that the EC contribution 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 the Non Self-Governing Territory are carried out for the benefits of the people of such Territory, and in accordance to their wishes.

6. The actions mentioned in the matrix essentially aim at improving the infrastructure of the ports of Western Sahara. This is not necessarily equal to benefiting the people of Western Sahara insofar as they are not mentioned in the programming document and it is not known whether and to what extent they are able to take advantage of such improvements.

7. The Legal Service is not in a position to establish the facts on the ground and to conclude that the abovementioned actions targeting ports of Western Sahara actually benefit the population of Western Sahara. This assessment needs to be done in concrete terms on the basis of all relevant information, and the Joint Committee established in the FPA should play in this context.

8. On the basis of the elements that are currently available (catches by EU flagged vessels in the waters of Western Sahara, lack of evidence in the annual and multiannual reports that the exploitation of fisheries resources in Western Sahara actually benefits the Saharawi people) it is strongly recommendable that the next annual meeting or a special meeting of the Joint Committee addresses these issues with a view to find an amicable settlement, fully respecting the rights of the Saharawi people under international law. If such an amicable settlement could not be found, the Community should envisage either the suspension of the agreement in conformity with its Article 15 and Article 9 of the Protocol, or to apply the agreement in such a way that EU flagged vessels are excluded from the exploitation of the waters of Western Sahara.

9. 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 to 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 and issue fishing licences only for fishing zones that are situated in the waters off Morocco.

Ricardo PASSOS Gabriele MAZZINI

[1] The text of the letter is attached.

[2] The FPA was concluded by Council Regulation (EC) No 764/2006 on the conclusion of the Fisheries Partnership Agreement between the European Community and the Kingdom of Morocco (OJ L 141, 29.5.2006, p.1)

[3] See, for instance, Resolution for the Security Council 1871(2009) of 30 April 2009.

[4] "This Convention shall be open for signature by:
(a) all States;

(b) Namibia, represented by the United Nations Council for Namibia;

(c) all self-governing associated States which have chosen that status in an act of self-determination supervised and approved the United Nations in accordance with General Assembly resolution 1514 (XV) and which have competence over the matters governed by this Convention, including the competence to enter into treaties in respect of those matters;

(d) all self-governing associated States which, in accordance with their respective instruments of association, have competence over the matters governed by this Convention, including the competence to enter into treaties in respect of those matters;

(e) all territories which enjoy full internal self-government, recognized as such by the United Nations but have not attained full independence in accordance with General Assembly resolution 1514 (XV) and which have competence over the matters governed by this Convention, including the competence to enter into treaties in respect of those matters;

(f) international organizations, in accordance with Annex IX."

[5] See the report of the Secretary-General to the General Assembly, dated 16 March 2009, on the Information from Non Self-Governing Territories transmitted under Article 17 of the Charter of the United Nations (A/64/67): in this list no reports are recorded on Western Sahara by Spain.

[6] See, for an overview, Direction générale pour les politiques externes de l'Union Direction B, Département thématique, Sahara occidental : Country Briefing, Novembre 2009.

http://www.expo.ep.parl.union.eu/expo/webdav/site/myjahiasite/shared/podp/documents/Regions%20&%20countries/Euromed%20&%20Middle%20East/Sahara%20Occidental
See also See Report of the Secretary General on the situation concerning Western Sahara of 13 April 2009 (S/2009/200) and Resolution of the Security Council 1871(2009).

[7] Some Member States have declared catches in the CECAF subdivision 34.1.3 which includes waters off the coast of Northern Mauritania and the coast of Western Sahara. See questions E-1073/08 of 4 March 2008 and E-4295/08 of 25 July 2008 and the answers given by Commissioner BORG.

[8] See reply to written question E-4425/08 of 12 September 2008.

[9] Legal opinion SJ-0085/06, conclusions a) and b).

[10] Legal opinion SJ-0085/06, paras 19 and 37.

[11] C-286/90, Poulsen [1992] ECR I-6019, para 9, C-162/96, Racke [1998] EDR I-3655, para 45 and Joined Cases C-402/05 P and C-415/05 P, *Kadi and Al Barakaat Int'l Foundation/Council and Commission* [2008], nyr, para 291: "the European Community must respect international law in the exercise of its powers."

[12] In reply to question no 67 by Jens HOLMES on 12 March 2009 the Commission explained its position by stating that: "The EU considers that the issue of the international status of Western Sahara is a complex question that should be solved in a bilateral and multilateral context in the framework of the United Nations. It is for this reason that the FPAs do not include any reference to the status of Western Sahara".

[13] Legal Opinion SJ-0085/06, para 42.

[14] See, for instance, reply to question n° 67 by J. HOLMES (H-0079/09), reply by Mrs FERERRO-WALDNER to question E-4425/2008, reply by Mr BORG to question E-3007/2007, Mr BORG to question E-4946/2007.

[15] See minutes of the Third Joint Committee held on 17 and 18 March 2008 in Brussels and of the Fourth Joint Committee held in 1-3 April 2009 in Brussels.

[16] See "Rapport succinct sur l'appui financier communautaire à la politique sectorielle de la pêche au Royaume du Maroc", to be found as Annex 4 to the minutes of the Fourth Joint Committee held in Brussels on 1-3 April 2009. The following actions referred to ports situated in Western Sahara are mentioned: point I.4 ("réalisation des études techniques pour les établissements de formation maritime in Dakhla and Lâayoune"), point II.4 ("lancement des travaux de construction des halles de Boujdour"), point II.6 ("acquisition de matériel pour les établissements de formation maritime in Dakhla and Lâayoune").

[17] See legal opinion SJ-0085/06, points 39-40

[18] See Sahara occidental: Country Briefing, op. cit. See also resolution of 27 October 2005 approved by the Parliament on human rights in Western Sahara (P6_TA(2005)0300) para 3. See Report of the Secretary General of the United Nations on the situation concerning Western Sahara of 13 April 2009 (S/2009/200)

[19] See analysis in legal opinion SJ-0085/06, points 31-35.

[20] Council Regulation (EC) No 1006/2008 of 29 September 2008 concerning authorisations for fishing activities of Community fishing vessels outside Community waters and of third country vessels to Community waters, amending Regulations (EEC) No 2847/93 and (EC) No 1627/94 and repealing Regulations (EC) No 3317/94 (OJ L 286, 29.10.2008)

Links found in this article:

http://www.fishelsewhere.eu/index.php?parse_news=single&cat=140&art=1090